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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0169; Directorate Identifier 2014–NM–020–AD; Amendment 39–17808; AD 2014–06–04]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 747–8 and 747–8F series airplanes powered by certain General Electric (GE) engines. This AD requires removing certain defective software and installing new, improved software. This AD was prompted by a determination that the existing electronic engine control (EEC) software logic can prevent stowage of the thrust reversers (TRs) during certain circumstances, which could cause the TRs to move back to the deployed position. We are issuing this AD to prevent in-flight deployment of one or more TRs due to loss of the TR auto restow function, which could result in inadequate climb performance at an altitude insufficient for recovery, and consequent uncontrolled flight into terrain.

DATES: This AD is effective April 9, 2014.

We must receive comments on this AD by May 9, 2014.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Fax: 202–493–2251.
- Mail: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- Hand Delivery: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0169; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sue Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6438; fax: 425–917–6590; email: *suzanne.lucier@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We determined that the existing EEC software logic can prevent stowage of the TRs if the airplane changes back into air mode during a rejected or bounced landing for certain The Boeing Company Model 747–8 and 747–8F series airplanes powered by certain GE engines. If this occurs and the hydraulic isolation valve closes before the TRs are fully stowed, there is no hydraulic pressure for the auto-restow function and aerodynamic loads could cause the TRs to move back to the deployed position. We are issuing this AD to prevent in-flight deployment of one or more TRs due to loss of the TR auto restow function, which could result in inadequate climb performance at an altitude insufficient for recovery, and consequent uncontrolled flight into terrain.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires identifying the EEC software, and removing certain defective software and installing new, improved software. The removal and installation must be done in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the in-flight deployment of a TR due to loss of the TR auto restow function could result in inadequate climb performance at an altitude insufficient for recovery, and consequent uncontrolled flight into terrain. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number and Directorate Identifier 2014–NM–020–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic,

environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD affects 7 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Remove/install new software	6 work-hours × $85 per hour = $510	$0	$510	$3,570

Authority for This Rulemaking

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

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

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2014–06–04 The Boeing Company: Amendment 39–17808; Docket No. FAA–2014–0169; Directorate Identifier 2014–NM–020–AD.

(a) Effective Date

This AD is effective April 9, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–8 and 747–8F series airplanes, certificated in any category, powered by General Electric (GE) Aviation GEnx-2B67 or GEnx-2B67B engines.

(d) Subject

Joint Aircraft System Component (JASC) Code 7600, Engine Controls.

(e) Unsafe Condition

This AD was prompted by a determination that the existing electronic engine control (EEC) software logic can prevent stowage of the thrust reversers (TRs) during certain circumstances, which could cause the TRs to move back to the deployed position. We are issuing this AD to prevent in-flight deployment of one or more TRs due to loss of the TR auto restow function, which could result in inadequate climb performance at an altitude insufficient for recovery, and uncontrolled flight into terrain.

(f) Compliance

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

(g) Removal/Installation of Certain EEC Software

For airplanes having any EEC software part number identified in paragraph (g)(1), (g)(2), or (g)(3) of this AD: Within 90 days after the effective date of this AD, remove the EEC software, as applicable; and install new EEC software that is approved by the FAA.

(1) Software C032: GE P/N 2124M22P05, EEC kit number 738L370G02, Boeing P/N GEC43–2124–2205.

(2) Software C040: GE P/N 2124M22P07, EEC kit number 738L370G04, Boeing P/N GEC43–2124–2207.

(3) Software C045: GE P/N 2124M22P08, EEC kit number 738L370G05, Boeing P/N GEC43–2124–2208.

(h) Parts Installation

As of the effective date of this AD, no person may install EEC software having any P/N identified in paragraph (g)(1), (g)(2), or (g)(3) of this AD on any airplane.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Related Information

For more information about this AD, contact Sue Lucier, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356;

phone: 425–917–6438; fax: 425–917–6590; email: *suzanne.lucier@faa.gov*.

(k) Material Incorporated by Reference

None.

Issued in Renton, Washington, on March 14, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–06476 Filed 3–24–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30947; Amdt. No. 3581]

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 March 25, 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 March 25, 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 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 CFR sections 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 February 28, 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 3 APRIL 2014*

Aliceville, AL, George Downer, RNAV (GPS) RWY 6, Orig
Aliceville, AL, George Downer, RNAV (GPS) RWY 24, Orig
Aliceville, AL, George Downer, Takeoff Minimums and Obstacle DP, Orig
Oakland, CA, Metropolitan Oakland Intl, RNAV (GPS) Y RWY 30, Amdt 3
Miami, FL, Opa-Locka Executive, ILS OR LOC RWY 27R, Amdt 1A
Miami, FL, Opa-Locka Executive, RNAV (GPS) RWY 27R, Orig-A
Pensacola, FL, Pensacola International, ILS OR LOC RWY 17, Amdt 14A
Pensacola, FL, Pensacola International, NDB RWY 35, Amdt 17A
Pensacola, FL, Pensacola International, RNAV (GPS) RWY 8, Amdt 2A
Pensacola, FL, Pensacola International, RNAV (GPS) RWY 17, Amdt 2B
Pensacola, FL, Pensacola International, RNAV (GPS) RWY 26, Amdt 2A
Pensacola, FL, Pensacola International, RNAV (GPS) RWY 35, Amdt 2A
Pensacola, FL, Pensacola International, VOR RWY 8, Amdt 4A
St Petersburg-Clearwater, FL, St Pete-Clearwater Intl, ILS OR LOC RWY 18L, ILS RWY 18L (SA CAT I), ILS RWY 18L (CAT II), Amdt 22A
St Petersburg-Clearwater, FL, St Pete-Clearwater Intl, ILS OR LOC RWY 36R, Amdt 3A
St Petersburg-Clearwater, FL, St Pete-Clearwater Intl, RNAV (GPS) RWY 18L, Amdt 1B
St Petersburg-Clearwater, FL, St Pete-Clearwater Intl, RNAV (GPS) RWY 36R, Amdt 2B
St Petersburg-Clearwater, FL, St Pete-Clearwater Intl, RNAV (GPS)-A, Amdt 2A
St Petersburg-Clearwater, FL, St Pete-Clearwater Intl, VOR RWY 4, Amdt 1A
St Petersburg-Clearwater, FL, St Pete-Clearwater Intl, VOR RWY 36R, Amdt 1B
St Petersburg-Clearwater, FL, St Pete-Clearwater Intl, VOR/DME RWY 18L, Amdt 1B
St Petersburg-Clearwater, FL, St Pete-Clearwater Intl, VOR/DME–B, Orig-A
Vero Beach, FL, Vero Beach Muni, RNAV (GPS) RWY 4, Amdt 1A
Vero Beach, FL, Vero Beach Muni, RNAV (GPS) RWY 12R, Amdt 2A
Vero Beach, FL, Vero Beach Muni, RNAV (GPS) RWY 22, Amdt 1A
Vero Beach, FL, Vero Beach Muni, RNAV (GPS) RWY 30L, Amdt 2A
Vero Beach, FL, Vero Beach Muni, Takeoff Minimums and Obstacle DP, Orig-A
Vero Beach, FL, Vero Beach Muni, VOR RWY 12R, Amdt 14B
Vero Beach, FL, Vero Beach Muni, VOR/DME RWY 30L, Amdt 4A
Mount Carmel, IL, Mount Carmel Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Sturgis, KY, Sturgis Muni, RNAV (GPS) RWY 1, Amdt 1
Sturgis, KY, Sturgis Muni, RNAV (GPS) RWY 19, Amdt 1
Sturgis, KY, Sturgis Muni, Takeoff Minimums and Obstacle DP, Amdt 4
Mackinac Island, MI, Mackinac Island, RNAV (GPS) RWY 8, Amdt 1
Mackinac Island, MI, Mackinac Island, RNAV (GPS) RWY 26, Amdt 1
Traverse City, MI, Cherry Capital, RNAV (GPS) RWY 10, Amdt 1
Traverse City, MI, Cherry Capital, RNAV (GPS) RWY 28, Orig
Troy, MI, Oakland/Troy, RNAV (GPS) RWY 9, Amdt 2
Minneapolis, MN, Flying Cloud, RNAV (GPS) RWY 10L, Amdt 1
Minneapolis, MN, Flying Cloud, RNAV (GPS) RWY 28R, Amdt 2A
Clinton, MO, Clinton Rgnl, NDB RWY 4, Amdt 8
Clinton, MO, Clinton Rgnl, NDB RWY 22, Amdt 9
Clinton, MO, Clinton Rgnl, RNAV (GPS) RWY 4, Amdt 1
Clinton, MO, Clinton Rgnl, RNAV (GPS) RWY 18, Orig
Clinton, MO, Clinton Rgnl, RNAV (GPS) RWY 22, Amdt 1
Clinton, MO, Clinton Rgnl, RNAV (GPS) RWY 36, Orig
Clinton, MO, Clinton Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
Cleveland, MS, Cleveland Muni, RNAV (GPS) RWY 18, Amdt 1
Cleveland, MS, Cleveland Muni, RNAV (GPS) RWY 36, Orig-A
Cleveland, MS, Cleveland Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Cleveland, MS, Cleveland Muni, VOR–A, Amdt 9
Pinehurst/Southern Pines, NC, Moore County, ILS Y OR LOC/DME Y RWY 5, Orig
Pinehurst/Southern Pines, NC, Moore County, ILS Z OR LOC/DME Z RWY 5, Amdt 2
Pinehurst/Southern Pines, NC, Moore County, RNAV (GPS) RWY 5, Amdt 1
Pinehurst/Southern Pines, NC, Moore County, RNAV (GPS) RWY 23, Amdt 2
Las Vegas, NV, Mc Carran Intl, ILS OR LOC/DME RWY 1L, Amdt 1
Sidney, NY, Sidney Muni, RNAV (GPS) RWY 25, Amdt 1
Stigler, OK, Stigler Rgnl, RNAV (GPS) RWY 35, Amdt 1
Latrobe, PA, Arnold Palmer Rgnl, NDB RWY 23, Amdt 13C, CANCELED
York, PA, York, NDB RWY 17, Amdt 7A, CANCELED
Rock Hill, SC, Rock Hill/York CO/Bryant Field, ILS Y OR LOC Y RWY 2, Orig
Rock Hill, SC, Rock Hill/York CO/Bryant Field, ILS Z OR LOC Z RWY 2, Amdt 2
Rock Hill, SC, Rock Hill/York CO/Bryant Field, RNAV (GPS) RWY 2, Amdt 2
Lawrenceburg, TN, Lawrenceburg-Lawrence County, GPS RWY 17, Orig-A, CANCELED
Oneida, TN, Scott Muni, SDF RWY 23, AMDT 5, CANCELED
El Paso, TX, El Paso Intl, ILS OR LOC RWY 22, Amdt 32C
El Paso, TX, El Paso Intl, LOC/DME RWY 4, Amdt 3A
El Paso, TX, El Paso Intl, RADAR–1, Amdt 15A
El Paso, TX, El Paso Intl, RNAV (GPS) RWY 26R, Orig-A
El Paso, TX, El Paso Intl, RNAV (GPS) X RWY 4, Orig-B
El Paso, TX, El Paso Intl, RNAV (GPS) Y RWY 22, Orig-D
El Paso, TX, El Paso Intl, RNAV (GPS) Y RWY 26L, Amdt 1A
El Paso, TX, El Paso Intl, RNAV (RNP) Y RWY 4, Orig-C
El Paso, TX, El Paso Intl, RNAV (RNP) Z RWY 4, Orig-B
El Paso, TX, El Paso Intl, RNAV (RNP) Z RWY 22, Amdt 1
El Paso, TX, El Paso Intl, RNAV (RNP) Z RWY 26L, Amdt 1
Presidio, TX, Presidio Lely Intl, RNAV (GPS)-A, Orig
Presidio, TX, Presidio Lely Intl, Takeoff Minimums and Obstacle DP, Orig
Blackstone, VA, Allen C Perkinson Blackstone AAF, RNAV (GPS) RWY 4, Amdt 1
Blackstone, VA, Allen C Perkinson Blackstone AAF, RNAV (GPS) RWY 22, Amdt 1
Blackstone, VA, Allen C Perkinson Blackstone AAF, Takeoff Minimums and Obstacle DP, Amdt 3
Emporia, VA, Emporia-Greensville Rgnl, LOC RWY 34, Amdt 1A
Emporia, VA, Emporia-Greensville Rgnl, RNAV (GPS) RWY 16, Amdt 1A
Emporia, VA, Emporia-Greensville Rgnl, RNAV (GPS) RWY 34, Amdt 1A
Emporia, VA, Emporia-Greensville Rgnl, Takeoff Minimums and Obstacle DP, Orig-A
Olympia, WA, Olympia Rgnl, ILS OR LOC RWY 17, Amdt 12
Cable, WI, Cable Union, Takeoff Minimums and Obstacle DP, Amdt 5

Superior, WI, Richard I Bong, Takeoff Minimums and Obstacle DP, Amdt 6

[FR Doc. 2014–06269 Filed 3–24–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30948; Amdt. No. 3582]

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 March 25, 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 March 25, 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 CFR sections 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 February 28, 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.

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

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

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
4/3/2014	OK	Pryor	Mid-America Industrial	4/4127	02/10/14	This NOTAM published in TL 14–07, is hereby rescinded in its entirety.
4/3/2014	MT	Great Falls	Great Falls Intl	4/0254	2/27/14	ILS OR LOC/DME RWY 3, ILS RWY 3 (SA CAT I), ILS RWY 3 (CAT II & III), Amdt 5.
4/3/2014	MD	Baltimore	Martin State	4/2135	02/19/14	VOR/DME OR TACAN Z RWY 15, Orig.
4/3/2014	NJ	Newark	Newark Liberty Intl	4/2155	02/19/14	COPTER ILS/DME RWY 22L, Orig-B.
4/3/2014	TN	Nashville	Nashville Intl	4/2852	02/14/14	VOR/DME RWY 13, Amdt 13B.
4/3/2014	TX	College Station	Easterwood Field	4/4178	02/13/14	VOR OR TACAN RWY 10, Amdt 19A.
4/3/2014	NC	Clinton	Clinton-Sampson County	4/4644	02/12/14	RNAV (GPS) Y RWY 24, Amdt 1.
4/3/2014	NC	Clinton	Clinton-Sampson County	4/4645	02/12/14	LOC RWY 6, Amdt 3.
4/3/2014	NC	Clinton	Clinton-Sampson County	4/4648	02/12/14	RNAV (GPS) RWY 6, Amdt 2.
4/3/2014	NC	Clinton	Clinton-Sampson County	4/4649	02/12/14	VOR/DME A, Amdt 6.
4/3/2014	FL	Brooksville	Hernando County	4/4682	02/13/14	RNAV (GPS) RWY 21, Amdt 1B.
4/3/2014	TN	Trenton	Gibson County	4/4965	02/13/14	RNAV (GPS) RWY 19, Orig.
4/3/2014	TN	Trenton	Gibson County	4/4966	02/13/14	VOR/DME A, Amdt 6.
4/3/2014	TN	Trenton	Gibson County	4/4967	02/13/14	RNAV (GPS) RWY 1, Orig.
4/3/2014	MD	Easton	Easton/Newnam Field	4/5001	02/13/14	RNAV (GPS) RWY 22, Amdt 1.
4/3/2014	MD	Easton	Easton/Newnam Field	4/5002	02/13/14	RNAV (GPS) RWY 33, Orig.
4/3/2014	MD	Easton	Easton/Newnam Field	4/5003	02/13/14	RNAV (GPS) RWY 4, Orig.
4/3/2014	MD	Easton	Easton/Newnam Field	4/5005	02/13/14	RNAV (GPS) RWY 15, Orig.
4/3/2014	MD	Easton	Easton/Newnam Field	4/5006	02/13/14	ILS OR LOC/DME RWY 4, Amdt 1.
4/3/2014	ME	Lincoln	Lincoln Rgnl	4/5187	02/13/14	RNAV (GPS) RWY 17, Orig.
4/3/2014	ME	Lincoln	Lincoln Rgnl	4/5190	02/13/14	RNAV (GPS) RWY 35, Orig.
4/3/2014	MS	Starkville	Oktibbeha	4/5239	02/13/14	Takeoff Minimums and (Obstacle) DP, Orig.
4/3/2014	DC	Washington	Manassas Rgnl/Harry P. Davis Field.	4/5242	02/07/14	RNAV (GPS) RWY 16R, Amdt 1.
4/3/2014	SC	Hartsville	Hartsville Rgnl	4/5253	02/12/14	NDB RWY 21, Amdt 1.
4/3/2014	SC	Hartsville	Hartsville Rgnl	4/5254	02/12/14	RNAV (GPS) RWY 21, Orig-A.
4/3/2014	SC	Hartsville	Hartsville Rgnl	4/5255	02/12/14	NDB RWY 3, Amdt 1.
4/3/2014	SC	Hartsville	Hartsville Rgnl	4/5256	02/12/14	RNAV (GPS) RWY 3, Orig-A.
4/3/2014	PA	Allentown	Allentown Queen City Muni	4/5291	02/13/14	VOR B, Amdt 8A.
4/3/2014	PA	Allentown	Allentown Queen City Muni	4/5292	02/13/14	RNAV (GPS) RWY 7, Amdt 1A.
4/3/2014	PA	Reading	Reading Rgnl/Carl A Spaatz Field.	4/5561	02/13/14	RNAV (GPS) RWY 36, Orig.
4/3/2014	PA	Reading	Reading Rgnl/Carl A Spaatz Field.	4/5562	02/13/14	ILS OR LOC RWY 36, Amdt 30A.
4/3/2014	PA	Reading	Reading Rgnl/Carl A Spaatz Field.	4/5563	02/13/14	ILS OR LOC RWY 13, Amdt 1A.
4/3/2014	ME	Eastport	Eastport Muni	4/5832	02/12/14	RNAV (GPS) RWY 33, Orig.
4/3/2014	ME	Eastport	Eastport Muni	4/5833	02/12/14	NDB RWY 33, Amdt 1.
4/3/2014	ME	Eastport	Eastport Muni	4/5834	02/12/14	NDB RWY 15, Amdt 1.
4/3/2014	ME	Eastport	Eastport Muni	4/5835	02/12/14	RNAV (GPS) RWY 15, Orig.
4/3/2014	PA	Shamokin	Northumberland County	4/5838	02/13/14	VOR RWY 8, Amdt 3B.
4/3/2014	PA	Shamokin	Northumberland County	4/5839	02/13/14	RNAV (GPS) RWY 26, Orig.
4/3/2014	PA	Shamokin	Northumberland County	4/5840	02/13/14	RNAV (GPS) RWY 8, Orig-A.
4/3/2014	MN	Willmar	Willmar Muni-John L Rice Field.	4/5859	02/14/14	VOR RWY 31, Orig.
4/3/2014	MA	Plymouth	Plymouth Muni	4/5886	02/13/14	ILS OR LOC/DME RWY 6, Amdt 1B.
4/3/2014	MA	Plymouth	Plymouth Muni	4/5887	02/13/14	RNAV (GPS) RWY 6, Amdt 1.
4/3/2014	NJ	Old Bridge	Old Bridge	4/5891	02/13/14	RNAV (GPS) RWY 6, Orig.
4/3/2014	NJ	Old Bridge	Old Bridge	4/5892	02/13/14	VOR RWY 24, Amdt 4.
4/3/2014	NJ	Old Bridge	Old Bridge	4/5893	02/13/14	RNAV (GPS) RWY 24, Orig.
4/3/2014	GA	Fort Stewart (Hinesville).	Wright AAF (Fort Stewart)/ Midcoast Rgnl.	4/5894	02/19/14	NDB RWY 33R, Orig.

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
4/3/2014	GA	Fort Stewart (Hinesville).	Wright AAF (Fort Stewart)/ Midcoast Rgnl.	4/5895	02/19/14	RNAV (GPS) RWY 33R, Orig.
4/3/2014	MS	Meridian	Key Field	4/5911	02/13/14	ILS OR LOC RWY 19, Amdt 1A.
4/3/2014	FL	Fort Myers	Page Field	4/6069	02/12/14	RNAV (GPS) RWY 13, Amdt 1A.
4/3/2014	FL	Fort Myers	Page Field	4/6070	02/12/14	VOR RWY 13, Orig-C.
4/3/2014	FL	Fort Myers	Page Field	4/6071	02/12/14	ILS OR LOC RWY 5, Amdt 7.
4/3/2014	FL	Fort Myers	Page Field	4/6072	02/12/14	RNAV (GPS) RWY 23, Orig.
4/3/2014	FL	Fort Myers	Page Field	4/6076	02/12/14	RNAV (GPS) RWY 5, Orig.
4/3/2014	FL	Fort Myers	Page Field	4/6078	02/12/14	RNAV (GPS) RWY 31, Orig.
4/3/2014	IA	Fort Dodge	Fort Dodge Rgnl	4/6186	02/21/14	RNAV (GPS) RWY 30, Amdt 1.
4/3/2014	IA	Fort Dodge	Fort Dodge Rgnl	4/6189	02/21/14	ILS OR LOC RWY 6, Amdt 7B.
4/3/2014	IA	Fort Dodge	Fort Dodge Rgnl	4/6190	02/21/14	RNAV (GPS) RWY 6, Amdt 1.
4/3/2014	MI	Kalamazoo	Kalamazoo/Battle Creek Intl	4/6209	02/13/14	NDB RWY 35, Amdt 19A.
4/3/2014	MI	Kalamazoo	Kalamazoo/Battle Creek Intl	4/6210	02/13/14	RNAV (GPS) RWY 35, Orig-A.
4/3/2014	MI	Kalamazoo	Kalamazoo/Battle Creek Intl	4/6211	02/13/14	RADAR–1, Amdt 9A.
4/3/2014	MI	Kalamazoo	Kalamazoo/Battle Creek Intl	4/6212	02/13/14	VOR RWY 35, Amdt 17A.
4/3/2014	MI	Kalamazoo	Kalamazoo/Battle Creek Intl	4/6213	02/13/14	VOR RWY 23, Amdt 17.
4/3/2014	MI	Kalamazoo	Kalamazoo/Battle Creek Intl	4/6214	02/13/14	ILS OR LOC RWY 35, Amdt 22B.
4/3/2014	MI	Kalamazoo	Kalamazoo/Battle Creek Intl	4/6215	02/13/14	VOR RWY 5, Orig-B.
4/3/2014	MI	Kalamazoo	Kalamazoo/Battle Creek Intl	4/6216	02/13/14	VOR RWY 17, Amdt 18A.
4/3/2014	AL	Prattville	Prattville—Grouby Field	4/6235	02/13/14	RNAV (GPS) RWY 27, Orig.
4/3/2014	AL	Prattville	Prattville—Grouby Field	4/6236	02/13/14	VOR/DME A, Amdt 3.
4/3/2014	AL	Prattville	Prattville—Grouby Field	4/6237	02/13/14	RNAV (GPS) RWY 9, Amdt 2A.
4/3/2014	OH	Dayton	James M Cox Dayton Intl	4/6344	02/13/14	ILS OR LOC RWY 24R, Amdt 9A.
4/3/2014	TN	Bristol/Johnson/ Kingsport.	Tri-Cities Rgnl TN/VA	4/6345	02/14/14	ILS OR LOC RWY 23, ILS RWY 23 (CAT II), Amdt 24E.
4/3/2014	AL	Fayette	Richard Arthur Field	4/6346	02/13/14	RNAV (GPS) RWY 36, Amdt 1.
4/3/2014	AL	Fayette	Richard Arthur Field	4/6347	02/13/14	RNAV (GPS) RWY 18, Amdt 1.
4/3/2014	PA	Beaver Falls	Beaver County	4/6348	02/12/14	LOC RWY 10, Amdt 4.
4/3/2014	PA	Beaver Falls	Beaver County	4/6349	02/12/14	RNAV (GPS) RWY 10, Orig.
4/3/2014	PA	Beaver Falls	Beaver County	4/6350	02/12/14	RNAV (GPS) RWY 28, Orig.
4/3/2014	PA	Beaver Falls	Beaver County	4/6371	02/12/14	VOR RWY 28, Amdt 10.
4/3/2014	FL	Daytona Beach	Daytona Beach Intl	4/6927	02/14/14	RNAV (GPS) RWY 7R, Orig-C.
4/3/2014	FL	Daytona Beach	Daytona Beach Intl	4/6928	02/14/14	RNAV (GPS) RWY 34, Amdt 2B.
4/3/2014	FL	Daytona Beach	Daytona Beach Intl	4/6929	02/14/14	ILS OR LOC RWY 7L, Amdt 31.
4/3/2014	FL	Daytona Beach	Daytona Beach Intl	4/6930	02/14/14	RNAV (GPS) RWY 7L, Amdt 1.
4/3/2014	FL	Daytona Beach	Daytona Beach Intl	4/6931	02/14/14	RNAV (GPS) RWY 25R, Amdt 3.
4/3/2014	FL	Daytona Beach	Daytona Beach Intl	4/6932	02/14/14	VOR RWY 16, Amdt 18A.
4/3/2014	FL	Daytona Beach	Daytona Beach Intl	4/6933	02/14/14	ILS OR LOC RWY 25R, Orig.
4/3/2014	FL	Daytona Beach	Daytona Beach Intl	4/6934	02/14/14	RNAV (GPS) RWY 16, Amdt 1A.
4/3/2014	FL	Daytona Beach	Daytona Beach Intl	4/6935	02/14/14	RNAV (GPS) RWY 25L, Amdt 1.
4/3/2014	PA	Bradford	Bradford Rgnl	4/7013	02/13/14	RNAV (GPS) RWY 32, Amdt 1A.
4/3/2014	MD	Ocean City	Ocean City Muni	4/7116	02/12/14	VOR A, Amdt 3.
4/3/2014	MD	Ocean City	Ocean City Muni	4/7117	02/12/14	RNAV (GPS) RWY 32, Orig.
4/3/2014	MD	Ocean City	Ocean City Muni	4/7119	02/12/14	LOC RWY 14, Amdt 2.
4/3/2014	MD	Ocean City	Ocean City Muni	4/7120	02/12/14	RNAV (GPS) RWY 2, Orig.
4/3/2014	TX	Waco	TSTC Waco	4/7183	02/14/14	RNAV (GPS) RWY 35R, Amdt 1.
4/3/2014	IN	Anderson	Anderson Muni-Darlington Field.	4/7383	02/21/14	RNAV (GPS) RWY 30, Orig.
4/3/2014	IN	Anderson	Anderson Muni-Darlington Field.	4/7384	02/21/14	VOR A, Amdt 9.
4/3/2014	IN	Anderson	Anderson Muni-Darlington Field.	4/7385	02/21/14	NDB RWY 30, Amdt 6.
4/3/2014	IN	Anderson	Anderson Muni-Darlington Field.	4/7386	02/21/14	ILS OR LOC RWY 30, Amdt 1.
4/3/2014	OH	Ashtabula	Northeast Ohio Rgnl	4/7388	02/21/14	VOR RWY 9, Orig-B.
4/3/2014	OH	Ashtabula	Northeast Ohio Rgnl	4/7389	02/21/14	RNAV (GPS) RWY 27, Orig-A.
4/3/2014	OH	Ashtabula	Northeast Ohio Rgnl	4/7390	02/21/14	RNAV (GPS) RWY 9, Orig-A.
4/3/2014	OH	Ashtabula	Northeast Ohio Rgnl	4/7393	02/21/14	VOR/DME RWY 27, Amdt 6B.
4/3/2014	TX	Cleburne	Cleburne Rgnl	4/7406	02/13/14	LOC/DME RWY 15, Orig-C.
4/3/2014	TX	Corsicana	C David Campbell Field-Corsicana Muni.	4/7407	02/14/14	NDB RWY 32, Amdt 3A.
4/3/2014	TX	Corsicana	C David Campbell Field-Corsicana Muni.	4/7408	02/14/14	NDB RWY 14, Amdt 4A.
4/3/2014	TX	Corsicana	C David Campbell Field-Corsicana Muni.	4/7409	02/14/14	VOR/DME A, Amdt 1A.
4/3/2014	VA	South Hill	Mecklenburg-Brunswick Rgnl	4/7410	02/14/14	LOC RWY 1, Orig-A.
4/3/2014	TX	Corsicana	C David Campbell Field-Corsicana Muni.	4/7411	02/14/14	VOR/DME B, Amdt 1A.
4/3/2014	VA	South Hill	Mecklenburg-Brunswick Rgnl	4/7412	02/14/14	RNAV (GPS) RWY 19, Orig.
4/3/2014	VA	South Hill	Mecklenburg-Brunswick Rgnl	4/7413	02/14/14	RNAV (GPS) RWY 1, Orig.

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
4/3/2014	MA	Marshfield	Marshfield Muni—George Harlow Field.	4/7418	02/14/14	RNAV (GPS) RWY 6, Orig-A.
4/3/2014	MA	Marshfield	Marshfield Muni—George Harlow Field.	4/7419	02/14/14	RNAV (GPS) RWY 24, Orig.
4/3/2014	MA	Marshfield	Marshfield Muni—George Harlow Field.	4/7420	02/14/14	NDB RWY 24, Amdt 2A.
4/3/2014	MA	Marshfield	Marshfield Muni—George Harlow Field.	4/7421	02/14/14	NDB RWY 6, Amdt 4C.
4/3/2014	KS	Hutchinson	Hutchinson Muni	4/7745	02/21/14	ILS OR LOC RWY 13, Amdt 16C.
4/3/2014	KS	Hutchinson	Hutchinson Muni	4/7746	02/21/14	NDB RWY 13, Amdt 15A.
4/3/2014	WI	West Bend	West Bend Muni	4/7984	02/14/14	RNAV (GPS) RWY 31, Orig.
4/3/2014	WI	West Bend	West Bend Muni	4/7985	02/14/14	RNAV (GPS) RWY 13, Orig-A.
4/3/2014	WI	West Bend	West Bend Muni	4/7986	02/14/14	RNAV (GPS) RWY 24, Orig.
4/3/2014	WI	West Bend	West Bend Muni	4/7987	02/14/14	VOR RWY 24, Amdt 3B.
4/3/2014	WI	West Bend	West Bend Muni	4/7988	02/14/14	VOR RWY 13, Amdt 5B.
4/3/2014	WI	West Bend	West Bend Muni	4/7989	02/14/14	LOC RWY 31, Orig-C.
4/3/2014	WI	West Bend	West Bend Muni	4/7990	02/14/14	RNAV (GPS) RWY 6, Orig-A.
4/3/2014	FL	West Palm Beach	Palm Beach Intl	4/7998	02/19/14	ILS OR LOC RWY 28R, Amdt 3.
4/3/2014	FL	West Palm Beach	Palm Beach Intl	4/7999	02/19/14	RNAV (GPS) Y RWY 28R, Amdt 2.
4/3/2014	FL	West Palm Beach	Palm Beach Intl	4/8000	02/19/14	RNAV (GPS) Y RWY 32, Amdt 2.
4/3/2014	TN	Covington	Covington Muni	4/8323	02/14/14	Takeoff Minimums and (Obstacle) DP, Orig.
4/3/2014	NY	New York	Long Island Mac Arthur	4/8346	02/19/14	RNAV (GPS) RWY 6, Amdt 1.
4/3/2014	NY	New York	Long Island Mac Arthur	4/8347	02/19/14	RNAV (GPS) RWY 33L, Orig.
4/3/2014	NY	New York	Long Island Mac Arthur	4/8348	02/19/14	RNAV (GPS) RWY 24, Amdt 1A.
4/3/2014	NY	New York	Long Island Mac Arthur	4/8349	02/19/14	ILS OR LOC RWY 24, Amdt 4A.
4/3/2014	NY	New York	Long Island Mac Arthur	4/8350	02/19/14	RNAV (GPS) RWY 15R, Orig.
4/3/2014	ME	Auburn/Lewiston	Auburn/Lewiston Muni	4/8497	02/19/14	VOR/DME A, Amdt 1.
4/3/2014	ME	Auburn/Lewiston	Auburn/Lewiston Muni	4/8498	02/19/14	RNAV (GPS) RWY 22, Amdt 1.
4/3/2014	GA	Dublin	W H 'Bud' Barron	4/8502	02/21/14	RNAV (GPS) RWY 2, Orig.
4/3/2014	GA	Dublin	W H 'Bud' Barron	4/8504	02/21/14	RNAV (GPS) RWY 20, Orig.
4/3/2014	GA	Dublin	W H ''Bud' Barron	4/8505	02/21/14	ILS OR LOC RWY 2, Amdt 2A.
4/3/2014	GA	Fort Stewart (Hinesville).	Wright AAF (Fort Stewart)/ Midcoast Rgnl.	4/8873	02/19/14	RNAV (GPS) RWY 6L, Orig.
4/3/2014	PA	Lancaster	Lancaster	4/8874	02/21/14	VOR/DME RWY 31, Amdt 4A.
4/3/2014	PA	Lancaster	Lancaster	4/8875	02/21/14	VOR RWY 31, Amdt 16.
4/3/2014	PA	Lancaster	Lancaster	4/8876	02/21/14	VOR/DME RWY 26, Amdt 10.
4/3/2014	PA	Lancaster	Lancaster	4/8877	02/21/14	VOR/DME RWY 8, Amdt 6.
4/3/2014	PA	Lancaster	Lancaster	4/8878	02/21/14	VOR RWY 8, Amdt 21.
4/3/2014	MD	Ocean City	Ocean City Muni	4/9173	02/18/14	RNAV (GPS) RWY 14, Orig-D.
4/3/2014	MD	Cumberland	Greater Cumberland Rgnl	4/9215	02/21/14	RNAV (GPS) RWY 23, Orig-A.
4/3/2014	MD	Cumberland	Greater Cumberland Rgnl	4/9216	02/21/14	LOC/DME RWY 23, Amdt 6B.
4/3/2014	MD	Cumberland	Greater Cumberland Rgnl	4/9217	02/21/14	LOC A, Amdt 4.
4/3/2014	MI	Ann Arbor	Ann Arbor Muni	4/9257	02/21/14	RNAV (GPS) RWY 24, Amdt 2A.
4/3/2014	NH	Lebanon	Lebanon Muni	4/9258	02/21/14	RNAV (GPS) RWY 36, Orig.
4/3/2014	NH	Lebanon	Lebanon Muni	4/9259	02/21/14	RNAV (GPS) RWY 25, Orig.
4/3/2014	NH	Lebanon	Lebanon Muni	4/9260	02/21/14	VOR/DME RWY 7, Amdt 1B.
4/3/2014	NH	Lebanon	Lebanon Muni	4/9262	02/21/14	VOR RWY 25, Amdt 1.
4/3/2014	NH	Lebanon	Lebanon Muni	4/9263	02/21/14	RNAV (GPS) RWY 7, Orig-B.
4/3/2014	NH	Lebanon	Lebanon Muni	4/9264	02/21/14	RNAV (GPS) RWY 18, Orig.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

[Docket No. FDA–2014–N–0002]

Implantation or Injectable Dosage Form New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for 104 approved new animal drug applications (NADAs) and 5 approved abbreviated new animal drug applications (ANADAs) for implantation or injectable dosage form new animal drug products from Pfizer, Inc., including its several subsidiaries and divisions, to Zoetis, Inc. FDA is also amending the animal drug regulations to remove entries describing conditions of use for new animal drug products for which no NADA is approved, to make minor corrections, and to reflect a

current format. This is being done to increase the accuracy and readability of the regulations.

DATES: This rule is effective March 25, 2014.

FOR FURTHER INFORMATION CONTACT: Steven D. Vaughn, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855; 240–276–8300, *steven.vaughn@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, and its wholly owned subsidiaries Alpharma, LLC; Fort Dodge Animal Health, Division of Wyeth; Fort Dodge Animal Health, Division of Wyeth Holdings Corp.; and its division, Pharmacia & Upjohn Co., have informed FDA that they have transferred ownership of, and all rights and interest in, the 104 approved NADAs and 5 approved ANADAs in table 1 to Zoetis, Inc., 333 Portage St., Kalamazoo, MI 49007 as follows:

TABLE 1—NADAS AND ANADAS BEING TRANSFERRED FROM PFIZER, INC., TO ZOETIS, INC.

File No.	Product name
006–103	FOLLUTEIN (chorionic gonadotropin) Veterinary.
006–281	INTRAGEL (gelatin and sodium chloride) Injectable Solution.
006–417	RECOVR (tripelennamine hydrochloride) Injectable Solution.
008–769	LIQUAMYCIN (oxytetracycline hydrochloride) Injectable Solution.
008–932	KEMITHAL L.A. (thialbarbitone sodium) Powder for Injection.
009–576	SYNOVEX S and SYNOVEX C (progesterone and estradiol benzoate) Implants.
010–809	SURITAL (thiamylal sodium) Injectable Solution.
010–865	FERREXTRAN 100 (iron dextran complex) Injection.
011–241	Promazine HCl Injectable Solution.
011–427	SYNOVEX H (estradiol benzoate and testosterone propionate) Implants.
011–482	VETAME (Triflupromazine Hydrochloride) Injectable Solution.
011–593	Solu-Delta Cortef (prednisolone sodium succinate) Powder for Injection.
011–644	FELAC (colloidal ferric oxide) Injection.
011–789	PREDEF 2X (isoflupredone acetate) Injectable Suspension.
011–879	RUBRAFER S–100 (iron dextran complex) Injection.
011–953	BIOSOL (neomycin sulfate) Injectable Solution.
012–204	DEPO–MEDROL (methylprednisolone acetate) Injectable Suspension.
013–146	LIQUAMYCIN (oxytetracycline hydrochloride and lidocaine) Injectable Solution.
015–126	Spectinomycin Tablet and Injection.
015–147	DARBAZINE (prochlorperazine and isopropamide) Injection.
030–414	FLUCORT (flumethasone) Injectable Solution.
030–844	WINSTROL–V (stanozolol) Injectable Suspension.
031–944	DYNAMYXIN (sulfomyxin) Injectable.
033–655	S.E.Z. (sulfaethoxypyridazine) Intravenous Solution.
034–025	LINCOCIN (lincomycin hydrochloride) Injectable Solution.
034–705	EQUIPOISE (boldenone undecylenate) Injection.
036–211	ANAPRIME (flumethasone) Injectable Suspension.
036–212	FLUOSMIN (flumethasone acetate) Injectable Suspension.
038–838	ROBAXIN–V (methocarbamol) Injectable.
039–204	PROTOPAM (pralidoxime chloride) Powder for Injection.
041–245	AGRIBON (sulfadimethoxine) Injection 40%.
041–836	KANTRIM 200 (kanamycin sulfate) Injection.
043–079	CENTRINE (aminopentamide hydrogen sulfate) Injectable.
043–304	KETASET (ketamine hydrochloride) Injection.
044–611	TALWIN–V (pentazocine lactate) Injection.
045–514	EQUIBUTE (phenylbutazone) Injection.
045–716	TRANVET (propiopromazine hydrochloride) Injectable Solution.
046–788	Oxytocin Injection.
046–789	CHLOROPENT (chloral hydrate, magnesium sulfate, and pentobarbital) Injection.
046–790	Sodium Thiopental Powder for Injection.
049–553	RIPERCOL L (levamisole phosphate) Injection.
049–948	AQUACHEL 100 (oxytetracycline hydrochloride) Injectable Solution. with lidocaine.
055–064	PRINCILLIN (ampicillin trihydrate) Injection.
055–066	PRINCILLIN (ampicillin trihydrate) Injection.
055–071	PRINCILLIN (ampicillin trihydrate) Injection.
055–079	AMPI–JECT (ampicillin trihydrate) Injectable Suspension.
055–084	AMP–EQUINE (ampicillin sodium) Powder for Injection.
055–089	AMOXI–INJECT (amoxicillin trihydrate) Injectable Suspension. (for Cattle).
055–091	AMOXI–INJECT (amoxicillin trihydrate) Injectable Suspension. (for Dogs and Cats).
065–087	LONGICIL Fortified (penicillin G benzathine and penicillin G procaine) Suspension.
065–130	CRYSTALLINE (penicillin G procaine) Injectable Suspension.
065–169	FLO–CILLIN (penicillin G benzathine penicillin G procaine) Injectable Suspension.
065–174	CRYSTALLINE (penicillin G procaine) Injectable Suspension.
065–463	MYCHEL–VET (chloramphenicol) Injection.
065–483	PFIZER–STREP (dihydrostreptomycin sulfate) Injection.
091–127	RACHELLE OXYVET (oxytetracycline hydrochloride) Injection.
091–192	RENOGRAFIN–76 (diatrizoate meglumine and diatrizoate sodium) Injection.
091–240	RENOVIST (diatrizoate meglumine and diatrizoate sodium) Injection.
092–116	KETASET Plus (ketamine hydrochloride, promazine hydrochloride, and aminopentamide hydrogen sulfate) Injection.
094–114	LIQUAMYCIN 100 (oxytetracycline hydrochloride) Injectable Solution.
096–675	EQUIPROXEN (naproxen) 10% Injectable Solution.

TABLE 1—NADAS AND ANADAS BEING TRANSFERRED FROM PFIZER, INC., TO ZOETIS, INC.—Continued

File No.	Product name
098–640	ROBIZONE (phenylbutazone) Injectable Solution. 20%.
099–402	AQUACHEL 100 (oxytetracycline hydrochloride) Injectable Solution.
100–202	PROSTIN F2 Alpha (dinoprost tromethamine) Injectable Solution.
100–254	SYNCHROCEPT (prostalene) Injectable Solution.
100–703	CARBOCAINE–V (mepivacaine hydrochloride) Injectable Solution.
101–777	ROBINUL–V (glycopyrrolate) Injectable.
102–437	TRAMISOL (levamisole phosphate) Injectable Solution.
102–990	TORBUTROL (butorphanol tartrate) Injection.
104–184	STYQUIN (butamisole hydrochloride) Injectable Solution.
106–111	TELAZOL (tiletamine hydrochloride and zolazepam hydrochloride) for Injection.
108–901	LUTALYSE (dinoprost tromethamine) Injectable Solution.
111–369	Dexamethasone Sterile Solution.
112–048	HYLARTIN V (hyaluronate sodium) Injection.
113–232	LIQUAMYCIN LA–200 (oxytetracycline hydrochloride) Injectable Solution.
128–549	BOVILENE (fenprostalene) Injection.
128–967	REPOSE (dibucaine hydrochloride and secobarbital sodium) Euthanasia Solution.
130–660	DEXACHEL (dexamethasone) Injection.
132–486	DI–TRIM (trimethoprim and sulfadiazine) 24% Injectable Suspension.
134–778	DI–TRIM (trimethoprim and sulfadiazine) 48% Injectable Suspension.
135–780	TORBUGESIC (butorphanol tartrate) Injection.
136–651	GUAILAXIN (guaifenesin) Powder for Injection.
138–903	PORCILENE (fenprostalene) Injection.
139–237	FACTREL (gonadorelin hydrochloride) Injection.
139–913	EQURON (hyaluronate sodium) Injection.
140–269	KETOFEN (ketoprofen) Injection.
140–338	NAXCEL (ceftiofur sodium) Sterile Powder for Injection.
140–890	EXCENEL RTU (ceftiofur hydrochloride) Injectable Suspension.
141–043	SYNOVEX Choice or SYNOVEX Plus (trenbolone acetate and estradiol benzoate) Implants.
141–047	TORBUGESIC–SA (butorphanol tartrate) Injection.
141–061	DECTOMAX (doramectin) Injectable Solution.
141–069	FIRST GUARD (colistimethate sodium) Sterile Powder.
141–077	ADSPEC (spectinomycin sulfate tetrahydrate) Sterile Solution.
141–189	PROHEART 6 (moxidectin) Injectable Suspension.
141–199	RIMADYL (carprofen) Injectable Solution.
141–207	ADVOCIN (danofloxacin) Injectable Solution.
141–209	EXCEDE (ceftiofur crystalline free acid) Injectable Suspension.
141–235	EXCEDE (ceftiofur crystalline free acid) Injectable Suspension. for Swine.
141–244	DRAXXIN (tulathromycin) Injectable Solution.
141–263	CERENIA (maropitant) Injectable Solution.
141–285	CONVENIA (cefovecin sodium) Powder for Injection.
141–288	EXCENEL (ceftiofur hydrochloride) Injectable Suspension.
141–303	PROPOCLEAR (propofol).
141–322	IMPROVEST (gonadotropin releasing factor-diphtheria toxoid conjugate) Injection.
200–109	VELENIUM (vitamin E and sodium selenite) Injection.
200–127	PROSPEC (spectinomycin sulfate tetrahydrate) Injectable Solution.
200–142	Flunixin Meglumine Solution.
200–274	Lincomycin Injectable Solution. 30%.
200–367	SYNOVEX T120, T40, or T80 (trenbolone acetate and estradiol) Implants.

Accordingly, the Agency is amending the regulations in 21 CFR part 522 to reflect these transfers of ownership. In addition, the regulations are being amended to make minor corrections and to reflect a current format. This is being done to increase the accuracy and readability of the regulations.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. In § 522.23, remove paragraphs (d) and (e); and revise paragraphs (b) and (c) to read as follows:

§ 522.23 Acepromazine.

* * * * *

(b) *Sponsors.* See Nos. 000010 and 000859 in § 510.600(c) of this chapter:

(c) *Conditions of use in dogs, cats, and horses*—(1) *Amount.* Dogs: 0.25 to 0.5 mg per pound (/lb) of body weight; Cats: 0.5 to 1.0 mg/lb of body weight; Horses: 2.0 to 4.0 mg per 100 lbs of body weight.

(2) *Indications for use.* For use as a tranquilizer and as a preanesthetic agent.

(3) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 522.44 [Removed]

■ 3. Remove § 522.44.

■ 4. Revise paragraph (b) of § 522.56 to read as follows:

§ 522.56 Amikacin.

* * * * *

(b) *Sponsor.* See No. 000859 in § 510.600(c) of this chapter.

* * * * *

■ 5. Revise § 522.62 to read as follows:

§ 522.62 Aminopentamide.

(a) *Specifications.* Each milliliter of solution contains 0.5 milligram (mg) aminopentamide hydrogen sulfate.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs and cats*—(1) *Amount.* Administer by subcutaneous or intramuscular injection every 8 to 12 hours as follows: For animals weighing up to 10 pounds (lbs): 0.1 mg; For animals weighing 11 to 20 lbs: 0.2 mg; For animals weighing 21 to 50 lbs: 0.3 mg; For animals weighing 51 to 100 lbs: 0.4 mg; For animals weighing over 100 lbs: 0.5 mg. Dosage may be gradually increased up to a maximum of five times the suggested dosage. Following parenteral use, dosage may be continued by oral administration of tablets.

(2) *Indications for use.* For the treatment of vomiting and/or diarrhea, nausea, acute abdominal visceral spasm, pylorospasm, or hypertrophic gastritis.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 6. Revise § 522.82 to read as follows:

§ 522.82 Aminopropazine.

(a) *Specifications.* Each milliliter of solution contains aminopropazine fumarate equivalent to 25 milligrams (mg) aminopropazine base.

(b) *Sponsor.* See No. 000061 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Dogs and cats*—(i) *Amount.* 1 to 2 mg per pound of body weight, repeated every 12 hours as indicated, by intramuscular or intravenous injection.

(ii) *Indications for use.* For reducing excessive smooth muscle contractions, such as occur in urethral spasms associated with urolithiasis.

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Horses*—(i) *Amount.* Administer 0.25 mg per pound of body weight, repeated every 12 hours as indicated, by intramuscular or intravenous injection.

(ii) *Indications for use.* For reducing excessive smooth muscle contractions, such as occur in colic spasms.

(iii) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 7. Revise § 522.84 to read as follows:

§ 522.84 Beta-aminopropionitrile.

(a) *Specifications.* The drug is a sterile powder. Each milliliter of constituted solution contains 0.7 milligrams (mg) beta-aminopropionitrile fumarate.

(b) *Sponsor.* See No. 064146 in § 510.600(c) of this chapter.

(c) *Conditions of use in horses*—(1) *Amount.* Administer 7 mg by intralesional injection every other day for five treatments beginning about 30 days after initial injury.

(2) *Indications for use in horses.* For treatment of tendinitis of the superficial digital flexor tendon (SDFT) in horses where there is sonographic evidence of fiber tearing.

(3) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 8. Revise § 522.88 to read as follows:

§ 522.88 Amoxicillin.

(a) *Specifications*—(1) Each vial contains 3 grams (g) of amoxicillin trihydrate. Each milliliter of constituted suspension contains 100 or 250 milligrams (mg) amoxicillin trihydrate for use as in paragraph (d)(1) of this section.

(2) Each vial contains 25 g of amoxicillin trihydrate. Each milliliter of constituted suspension contains 250 mg amoxicillin trihydrate for use as in paragraph (d)(2) of this section.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Related tolerance.* See § 556.38 of this chapter.

(d) *Conditions of use*—(1) *Dogs and cats*—(i) *Amount.* Administer 5 mg per pound of body weight daily for up to 5 days by intramuscular or subcutaneous injection.

(ii) *Indications for use*—(A) *Dogs.* For treatment of infections caused by susceptible strains of organisms as follows: Respiratory infections (tonsillitis, tracheobronchitis) due to *Staphylococcus aureus, Streptococcus* spp., *Escherichia coli,* and *Proteus mirabilis;* genitourinary infections (cystitis) due to *S. aureus, Streptococcus* spp., *E. coli,* and *P. mirabilis;* gastrointestinal infections (bacterial gastroenteritis) due to *S. aureus, Streptococcus* spp., *E. coli,* and *P. mirabilis;* bacterial dermatitis due to *S. aureus, Streptococcus* spp., and *P. mirabilis;* soft tissue infections (abscesses, lacerations, and wounds), due to *S. aureus, Streptococcus* spp., *E. coli,* and *P. mirabilis.*

(B) *Cats.* For treatment of infections caused by susceptible strains of organisms as follows: Upper respiratory infections due to *S. aureus, Staphylococcus* spp., *Streptococcus* spp., *Haemophilus* spp., *E. coli, Pasteurella* spp., and *P. mirabilis;* genitourinary infections (cystitis) due to *S. aureus, Streptococcus* spp., *E. coli, P. mirabilis,* and *Corynebacterium* spp.; gastrointestinal infections due to *E. coli, Proteus* spp., *Staphylococcus* spp., and *Streptococcus* spp.; skin and soft tissue infections (abscesses, lacerations, and wounds) due to *S. aureus, Staphylococcus* spp., *Streptococcus* spp., *E. coli,* and *Pasteurella multocida.*

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Cattle*—(i) *Amount.* Administer 3 to 5 mg per pound of body weight daily for up to 5 days by intramuscular or subcutaneous injection.

(ii) *Indications for use.* For treatment of diseases due to amoxicillin-susceptible organisms as follows: Respiratory tract infections (shipping fever, pneumonia) due to *P. multocida, P. hemolytica, Haemophilus* spp., *Staphylococcus* spp., and *Streptococcus* spp. and acute necrotic pododermatitis (foot rot) due to *Fusobacterium necrophorum.*

(iii) *Limitations.* Treated animals must not be slaughtered for food during treatment and for 25 days after the last treatment. Milk from treated cows must not be used for human consumption during treatment or for 96 hours (8 milkings) after last treatment. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 9. Revise § 522.90 to read as follows:

§ 522.90 Ampicillin injectable dosage forms.

■ 10. Revise § 522.90a to read as follows:

§ 522.90a Ampicillin trihydrate suspension.

(a) *Specifications.* (1) Each milliliter contains ampicillin trihydrate equivalent to 200 milligrams (mg) of ampicillin.

(2) Each milliliter contains ampicillin trihydrate equivalent to 150 mg of ampicillin.

(b) *Sponsors.* See sponsor numbers in § 510.600(c) of this chapter.

(1) No. 054771 for use of product described in paragraph (a)(1) as in paragraphs (d)(1), (d)(2), (d)(3)(i)(A), (d)(3)(ii)(A), (d)(3)(iii), and (d)(4) of this section.

(2) No. 054771 for use of product described in paragraph (a)(2) as in

paragraphs (d)(3)(i)(B), (d)(3)(ii)(B), and (d)(3)(iii) of this section.

(c) *Related tolerances.* See § 556.40 of this chapter.

(d) *Conditions of use*—(1) *Cattle*—(i) *Amount.* For enteritis: 3 mg per pound of body weight, intramuscularly, once or twice daily, for up to 3 days. For pneumonia: 3 mg per pound of body weight, intramuscularly, twice daily, for up to 3 days.

(ii) *Indications for use.* For treatment of bacterial enteritis in calves caused by *Escherichia coli* and bacterial pneumonia caused by *Pasteurella* spp. susceptible to ampicillin.

(iii) *Limitations.* Treated animals must not be slaughtered for food use during treatment or for 9 days after the last treatment. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Swine*—(i) *Amount.* 3 mg per pound of body weight by intramuscular injection, once or twice daily, for up to 3 days.

(ii) *Indications for use.* Treatment of bacterial enteritis (colibacillosis) caused by *E. coli* and bacterial pneumonia caused by *Pasteurella* spp. susceptible to ampicillin.

(iii) *Limitations.* Treated animals must not be slaughtered for food use during treatment or for 15 days after the last treatment. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(3) *Dogs*—(i) *Amount*—(A) 3 to 6 mg per pound of body weight by intramuscular injection, once or twice daily. Usual treatment is 3 to 5 days.

(B) 3 to 5 mg of ampicillin per pound of body weight, once a day for up to 4 days.

(ii) *Indications for use*—(A) Treatment of respiratory tract infections due to *E. coli, Pseudomonas* spp., *Proteus* spp., *Staphylococcus* spp., and *Streptococcus* spp.; tonsillitis due to *E. coli, Pseudomonas* spp., *Streptococcus* spp., and *Staphylococcus* spp.; generalized infections (septicemia) associated with abscesses, lacerations, and wounds due to *Staphylococcus* spp. and *Streptococcus* spp.

(B) Treatment of bacterial infections of the upper respiratory tract (tonsillitis) due to *Streptococcus* spp., *Staphylococcus* spp., *E. coli, Proteus* spp., and *Pasteurella* spp., and soft tissue infections (abscesses, lacerations, and wounds) due to *Staphylococcus* spp., *Streptococcus* spp., and *E. coli,* when caused by susceptible organisms.

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(4) *Cats*—(i) *Amount.* 5 to 10 mg per pound of body weight by intramuscular or subcutaneous injection, once or twice daily. Usual treatment is 3 to 5 days.

(ii) *Indications for use.* Treatment of generalized infections (septicemia) associated with abscesses, lacerations, and wounds due to *Staphylococcus* spp., *Streptococcus* spp., and *Pasteurella* spp.

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 11. In § 522.90b, revise the section heading to read as follows:

§ 522.90b Ampicillin trihydrate powder for injection.

* * * * *

§ 522.90c [Amended]

■ 12. In paragraph (b) of § 522.90c, remove ''000069 and 010515'' and in its place add ''010515 and 054771''.

■ 13. Revise § 522.144 to read as follows:

§ 522.144 Arsenamide.

(a) *Specifications.* Each milliliter of solution contains 10.0 milligrams arsenamide sodium.

(b) *Sponsor.* See No. 050604 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* Administer 0.1 milliliter (mL) per pound of body weight (1.0 mL for every 10 pounds) by intravenous injection twice a day for 2 days.

(2) *Indications for use.* For the treatment and prevention of canine heartworm disease caused by *Dirofilaria immitis.*

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 14. Revise § 522.161 to read as follows:

§ 522.161 Betamethasone.

(a) *Specifications.* Each milliliter of suspension contains:

(1) Betamethasone acetate equivalent to 10.8 milligrams (mg) betamethasone and betamethasone disodium phosphate equivalent to 3 mg of betamethasone.

(2) Betamethasone dipropionate equivalent to 5 mg betamethasone and betamethasone sodium phosphate equivalent to 2 mg of betamethasone.

(b) *Sponsor.* See sponsor numbers in § 510.600(c) of this chapter:

(1) No. 000061 for product described in paragraph (a)(1) of this section for use as in paragraphs (c)(1), (c)(2)(i), (c)(2)(ii)(A), and (c)(2)(iii) of this section.

(2) No. 000061 for product described in paragraph (a)(2) of this section for use as in paragraphs (c)(1), (c)(2)(i), (c)(2)(ii)(B), and (c)(2)(iii) of this section.

(c) *Conditions of use*—(1) *Dogs*—(i) *Amount.* Administer by intramuscular injection 0.25 to 0.5 milliliter (mL) per 20 pounds of body weight, depending on the severity of the condition. Frequency of dosage depends on recurrence of pruritic symptoms. Dosage may be repeated every 3 weeks or when symptoms recur, not to exceed a total of four injections.

(ii) *Indications for use.* As an aid in the control of pruritus associated with dermatoses.

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Horses*—(i) *Amount.* Administer 2.5 to 5 mL by intra-articular injection.

(ii) *Indications for use*—(A) For the treatment of various inflammatory joint conditions; for example, acute and traumatic lameness involving the carpel and fetlock joints.

(B) As an aid in the control of inflammation associated with various arthropathies.

(iii) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 522.204 [Amended]

■ 15. In paragraph (b) of § 522.204, remove ''053501'' and in its place add ''054771''.

■ 16. Revise § 522.234 to read as follows:

§ 522.234 Butamisole.

(a) *Specifications.* Each milliliter of solution contains 11 milligrams (mg) butamisole hydrochloride.

(b) *Sponsors.* See Nos. 000859 and 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* Administer 0.1 mg per pound of body weight by subcutaneous injection. In problem cases, retreatment for whipworms may be necessary in approximately 3 months. For hookworms, a second injection should be given 21 days after the initial treatment.

(2) *Indications for use.* For the treatment of infections with whipworms (*Trichuris vulpis*), and the hookworm (*Ancylostoma caninum*).

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 522.246 [Amended]

■ 17. In paragraph (b)(1) of § 522.246, remove ''000856'' and in its place add ''054771''.

■ 18. In § 522.275, revise the section heading to read as follows:

§ 522.275 N-Butylscopolammonium.

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■ 19. Revise § 522.300 to read as follows:

§ 522.300 Carfentanil.

(a) *Specifications.* Each milliliter of solution contains 3 milligrams (mg) carfentanil citrate.

(b) *Sponsor.* See No. 053923 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* Administer 5 to 20 micrograms per kilogram (0.005 to 0.020 mg per kilogram) of body weight into large muscle of the neck, shoulder, back, or hindquarter.

(2) *Indications for use.* For immobilizing free ranging and confined members of the family Cervidae (deer, elk, and moose).

(3) *Limitations.* Do not use in domestic animals intended for food. Do not use 30 days before or during hunting season. Federal law restricts this drug to use by or on the order of a licensed veterinarian. The licensed veterinarian shall be a veterinarian engaged in zoo and exotic animal practice, wildlife management programs, or research.

§ 522.304 [Amended]

■ 20. In paragraph (b) of § 522.304, remove ''000069'' and in its place add ''054771''.

§ 522.311 [Amended]

■ 21. In paragraph (b) of § 522.311, remove ''000069'' and in its place add ''054771''.

§ 522.313a [Amended]

■ 22. In paragraph (b) of § 522.313a, remove ''000009'' and in its place add ''054771''.

§ 522.313c [Amended]

■ 23. In paragraph (b) of § 522.313c, remove ''000009, 000409, and 068330'' and in its place add ''000409, 054771, and 068330''.

■ 24. Revise § 522.380 to read as follows:

§ 522.380 Chloral hydrate, pentobarbital, and magnesium sulfate.

(a) *Specifications.* Each milliliter of solution contains 42.5 milligrams (mg) of chloral hydrate, 8.86 mg of pentobarbital, and 21.2 mg of magnesium sulfate.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* For general anesthesia: Administer 20 to 50 milliliters per 100 pounds of body weight by intravenous injection until the desired effect is produced. Cattle usually require a lower dosage on the basis of body weight. As a sedative-relaxant: Administer at a level of one-fourth to one-half of the anesthetic dosage level.

(2) *Indications for use.* For general anesthesia and as a sedative-relaxant in cattle and horses.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 25. In § 522.390, revise the section heading and paragraphs (a), (b), and (c)(3) to read as follows:

§ 522.390 Chloramphenicol.

(a) *Specifications.* Each milliliter of solution contains 100 milligrams of chloramphenicol.

(b) *Sponsor.* See Nos. 000859 and 054771 in § 510.600(c) of this chapter.

(c) * * *

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian. Federal law prohibits the extralabel use of this drug in food-producing animals.

■ 26. Revise § 522.460 to read as follows:

§ 522.460 Cloprostenol.

(a) *Specifications.* Each milliliter of solution contains cloprostenol sodium equivalent to:

(1) 125 micrograms (µg) of cloprostenol; or

(2) 250 µg of cloprostenol.

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter.

(1) No. 000061 for use of product described in paragraph (a)(1) of this section as in paragraphs (c)(1)(i) and (c)(2) of this section.

(2) Nos. 000061 and 068504 for use of product described in paragraph (a)(2) as in paragraphs (c)(1)(ii), (c)(1)(iii), and (c)(2) of this section.

(c) *Conditions of use in cattle*—(1) *Amount and indications for use*—(i) Administer 375 µg by intramuscular injection to induce abortion in pregnant feedlot heifers from 1 week after mating until 4 1/2 months of gestation.

(ii) Administer 500 µg by intramuscular injection for terminating unwanted pregnancies from mismatings from 1 week after mating until 5 months after conception; for treating unobserved (nondetected) estrus, mummified fetus, and luteal cysts; and for the treatment of pyometra.

(iii) Administer 500 µg by intramuscular injection as a single injection regimen or double injection regimen with a second injection 11 days after the first, for scheduling estrus and ovulation to control the time at which cycling cows or heifers can be bred.

(2) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 522.468 [Amended]

■ 27. In paragraph (b) of § 522.468, remove ''046573'' and in its place add ''054771''.

■ 28. Revise § 522.480 to read as follows:

§ 522.480 Corticotropin.

(a) *Specifications.* Each milliliter of aqueous solution contains 40 or 80 U.S.P. (I.U.) units of repository corticotropin.

(b) *Sponsor.* See sponsors in § 510.600(c) of this chapter.

(1) No. 061623 for use as in paragraphs (c)(1) and (2) of this section.

(2) No. 026637 for use as in paragraph (c)(2) and (3) of this section.

(c) *Conditions of use*—(1) *Dogs*—(i) *Amount.* Administer one unit per pound of body weight by intramuscular injection.

(ii) *Indications for use.* As a diagnostic aid to test for adrenal dysfunction.

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Dogs and cats*—(i) *Amount.* Administer one unit per pound of body weight by intramuscular or subcutaneous injection, to be repeated as indicated.

(ii) *Indications for use.* For stimulation of the adrenal cortex where there is a general deficiency of corticotropin (ACTH).

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(3) *Cattle*—(i) *Amount.* Administer 200 to 600 units by intramuscular or subcutaneous injection as an initial dose, followed by a dose daily or every other day of 200 to 300 units.

(ii) *Indications for use.* As a therapeutic agent for primary bovine ketosis; and for stimulation of the adrenal cortex where there is a general deficiency of ACTH.

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 522.522 [Amended]

■ 29. In paragraph (b) of § 522.522, remove ''000069'' and in its place add ''054771''.

■ 30. Amend § 522.535 as follows:

■ a. Redesignate paragraph (d) as paragraph (c);

■ b. Revise the section heading, and paragraphs (a) and newly designated (c)(1)(iii).

The revisions read as follows:

§ 522.535 Desoxycorticosterone.

(a) *Specifications.* Each milliliter of suspension contains 25 milligrams of desoxycorticosterone pivalate.

* * * * *

(c) * * *

(1) * * *

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

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■ 31. Revise § 522.536 to read as follows:

§ 522.536 Detomidine.

(a) *Specification.* Each milliliter of solution contains 10 milligrams of detomidine hydrochloride.

(b) *Sponsor.* See No. 052483 in § 510.600(c) of this chapter.

(c) *Conditions of use in horses*—(1) *Amount.* For sedation, analgesia, or sedation and analgesia: 20 or 40 micrograms per kilogram (0.2 or 0.4 milliliter per 100 kilogram or 220 pounds) by body weight, depending on depth and duration required. For sedation, administer by intraveneous (IV) or intramuscular (IM) injection; for analgesia, administer by IV injection; for both sedation and analgesia, administer by IV injection.

(2) *Indication for use.* As a sedative and analgesic to facilitate minor surgical and diagnostic procedures in mature horses and yearlings.

(3) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 32. Amend § 522.540 as follows:

■ a. In paragraph (d)(2)(i), remove ''000069 and 000859'' and in its place add ''000859 and 054771'';

■ b. In paragraph (d)(2)(ii), remove ''000069'' and in its place add ''054771''; and

■ c. Revise the section heading and paragraphs (a)(3)(iii), (b)(1), (b)(3), (c)(1), (c)(3), (d)(1), (d)(3), (e)(1), and (e)(3).

The revisions read as follows:

§ 522.540 Dexamethasone solution.

(a) * * *

(3) * * *

(iii) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(b)(1) *Specifications.* Each milliliter of solution contains 2.0 mg of dexamethasone or 4.0 mg of dexamethasone sodium phosphate (equivalent to 3.0 mg dexamethasone).

* * * * *

(3) *Conditions of use*—(i) *Amount.* Administer 0.25 to 1 mg by intravenous injection, repeated for 3 to 5 days or until a response is noted.

(ii) *Indications for use.* For use in dogs for the treatment of inflammatory conditions, as supportive therapy in canine posterior paresis, as supportive therapy before or after surgery to enhance recovery of poor surgical risks, and as supportive therapy in nonspecific dermatosis.

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(c)(1) *Specifications.* Each milliliter of solution contains 2.0 mg of dexamethasone or 4.0 mg of dexamethasone sodium phosphate (equivalent to 3.0 mg of dexamethasone).

* * * * *

(3) *Conditions of use*—(i) *Amount.* Administer 2.5 to 5.0 mg by intravenous injection.

(ii) *Indications for use.* For use in horses as a rapid adrenal glucocorticoid and/or anti-inflammatory agent.

(iii) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(d)(1) *Specifications.* Each milliliter of solution contains 2.0 mg of dexamethasone or 4.0 mg of dexamethasone sodium phosphate (equivalent to 3.0 mg of dexamethasone).

* * * * *

(3) *Conditions of use*—(i) *Amount.* Administer by intravenous or intramuscular injection as follows:

(A) *Dogs:* 0.25 to 1 mg.

(B) *Cats:* 0.125 to 0.5 mg.

(C) *Horses:* 2.5 to 5 mg.

(ii) *Indications for use.* For use in dogs, cats, and horses as an anti-inflammatory agent.

(iii) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(e)(1) *Specifications.* Each milliliter of solution contains 4.0 mg of dexamethasone sodium phosphate (equivalent to 3.0 mg dexamethasone).

* * * * *

(3) *Conditions of use*—(i) *Amount.* Administer by intravenous injection as follows:

(A) *Dogs:* 0.25 to 1 mg; may be repeated for 3 to 5 days.

(B) *Horses:* 2.5 to 5 mg.

(ii) *Indications for use.* For use in dogs and horses for glucocorticoid and anti-inflammatory effect.

(iii) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 33. Revise § 522.542 to read as follows:

§ 522.542 Dexamethasone suspension.

(a) *Specifications.* Each milliliter of suspension contains 1 milligram (mg) of dexamethasone-21-isonicotinate.

(b) *Sponsor.* No. 000010 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* Administer by intramuscular injection as follows: Dogs: 0.25 to 1 mg; cats: 0.125 to 0.5 mg; horses: 5 to 20 mg. Dosage may be repeated.

(2) *Indications for use.* For the treatment of various inflammatory conditions associated with the musculoskeletal system in dogs, cats, and horses.

(3) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 34. Revise § 522.563 to read as follows:

§ 522.563 Diatrizoate.

(a) *Specifications.* Each milliliter of solution contains 34.3 percent diatrizoate meglumine and 35 percent diatrizoate sodium, or 66 percent diatrizoate meglumine and 10 percent diatrizoate sodium.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs and cats*—(1) *Amount.* For excretion urography, administer 0.5 to 1.0 milliliter (mL) per pound of body weight to a maximum of 30 mL intravenously. For cystography, remove urine, administer 5 to 25 mL directly into the bladder via catheter. For urethrography, administer 1.0 to 5 mL via catheter into the urethra to provide desired contrasts delineation. For angiocardiography (including aortography) rapidly inject 5 to 10 mL directly into the heart via catheter or intraventricular puncture. For cerebral angiography, rapid injection of 3 to 10 mL via carotid artery. For peripheral arteriography and/or venography and selective coronary arteriography, rapidly inject 3 to 10 mL intravascularly into the vascular bed to be delineated. For lymphography, slowly inject 1.0 to 10 mL directly into the lymph vessel to be delineated. For arthrography, slowly inject 1.0 to 5 mL directly into the joint to be delineated. For discography, slowly inject 0.5 to 1.0 mL directly into the disc to be delineated. For sialography, slowly inject 0.5 to 1.0 mL into the duct to be delineated. For

delineation of fistulous tracts, slowly inject quantity necessary to fill the tract. For delineation of peritoneal hernias, inject 0.5 to 1.0 mL per pound of body weight directly into the peritoneal cavity.

(2) *Indications for use.* For visualization in excretion urography, including renal angiography, uretography, cystography, and urethrography; aortography; angiocardiography, peripheral arteriography, and venography; selective coronary arteriography; cerebral angiography; lymphography; arthrography; discography; and sialography; and as an aid in delineating peritoneal hernias and fistulous tracts.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 35. In § 522.650, revise paragraphs (b), (c), (d)(1), and (d)(3) to read as follows:

§ 522.650 Dihydrostreptomycin sulfate injection.

* * * * *

(b) *Sponsors.* See Nos. 054771 and 055529 in § 510.600(c) of this chapter.

(c) *Related tolerance.* See § 556.200 of this chapter.

(d) * * *

(1) *Amount.* Administer 5 milligrams per pound of body weight by deep intramuscular injection every 12 hours, for 3 to 5 days or until the urine is free of leptospira for at least 72 hours as measured by darkfield microscopic examination.

* * * * *

(3) *Limitations.* Discontinue use 30 days before slaughter for food. Not for use in animals producing milk because use of the drug will contaminate the milk. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 522.690 [Amended]

■ 36. In paragraph (b) of § 522.690, remove ''000009'' and in its place add ''054771''.

■ 37. Revise § 522.723 to read as follows:

§ 522.723 Diprenorphine.

(a) *Specifications.* Each milliliter of solution contains 2 milligrams of diprenorphine hydrochloride.

(b) *Sponsors.* See No. 053923 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* It is administered intramuscularly or intravenously at a suitable dosage level depending upon the species.

(2) *Indications for use.* The drug is used for reversing the effects of etorphine hydrochloride injection, veterinary, the use of which is provided for in § 522.883, in wild and exotic animals.

(3) *Limitations.* For use in wild or exotic animals only. Do not use in domestic food-producing animals. Do not use 30 days before, or during, the hunting season in free-ranging wild animals that might be used for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian. Distribution is restricted to veterinarians engaged in zoo and exotic animal practice, wildlife management programs, and researchers.

§ 522.770 [Amended]

■ 38. In § 522.770, in paragraph (a), remove ''sterile aqueous''; and in paragraph (b), remove ''000069'' and in its place add ''054771''.

§ 522.778 [Removed]

■ 39. Remove § 522.778.

■ 40. Revise § 522.784 to read as follows:

§ 522.784 Doxylamine.

(a) *Specifications.* Each milliliter contains 11.36 milligrams (mg) of doxylamine succinate.

(b) *Sponsor.* See No. 000061 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount*—(i) *Horses:* Administer 25 mg per hundred pounds of body weight by intramuscular, subcutaneous, or slow intravenous injection.

(ii) *Dogs and cats:* Administer 0.5 to 1 mg per pound of body weight by intramuscular or subcutaneous injection. Doses may be repeated at 8 to 12 hours, if necessary, to produce desired effect.

(2) *Indications for use.* For use in conditions in which antihistaminic therapy may be expected to alleviate some signs of disease in horses, dogs, and cats.

(3) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 41. Revise § 522.800 to read as follows:

§ 522.800 Droperidol and fentanyl.

(a) *Specifications.* Each milliliter of solution contains 20 milligrams (mg) of droperidol and 0.4 mg of fentanyl citrate.

(b) *Sponsor.* See No. 000061 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.*

(i) For analgesia and tranquilization, administer as follows:

(A) 1 milliliter (mL) per 15 to 20 pounds (lbs) of body weight by intramuscular injection in conjunction with atropine sulfate administered at the rate of 0.02 mg per pound of body weight; or

(B) 1 mL per 25 to 60 lbs of body weight by intravenous injection in conjunction with atropine sulfate administered at the rate of 0.02 mg per pound of body weight.

(ii) For general anesthesia, administer as follows:

(A) Administer 1 mL per 40 lbs of body weight by intramuscular injection in conjunction with atropine sulfate administered at the rate of 0.02 mg per pound of body weight and followed in 10 minutes by an intravenous administration of sodium pentobarbital at the rate of 3 mg per pound of body weight; or

(B) Administer 1 mL per 25 to 60 lbs of body weight by intravenous injection in conjunction with atropine sulfate administered at the rate of 0.02 mg per pound of body weight and followed within 15 seconds by an intravenous administration of sodium pentobarbital at the rate of 3 mg per pound of body weight.

(2) *Indications for use.* As an analgesic and tranquilizer and for general anesthesia.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 42. In § 522.820, redesignate paragraphs (a) and (b) as paragraphs (b) and (a) respectively; and revise paragraphs (d)(1) introductory text, (d)(2) introductory text, and (d)(3) introductory text to read as follows:

§ 522.820 Erythromycin.

* * * * *

(d) * * *

(1) *Dog.* Administer product described in paragraph (a)(1) of this section as follows:

* * * * *

(2) *Cats.* Administer product described in paragraph (a)(1) of this section as follows:

* * * * *

(3) *Cattle.* Administer products described in paragraph (a) of this section as follows:

* * * * *

§ 522.842 [Amended]

■ 43. In paragraph (a)(1) of § 522.842, remove ''000856'' and in its place add ''054771''.

■ 44. Revise § 522.863 to read as follows:

§ 522.863 Ethylisobutrazine.

(a) *Specifications.* Each milliliter of solution contains 50 milligrams (mg) of ethylisobutrazine hydrochloride.

(b) *Sponsor.* See No. 000061 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* Administer 2 to 5 mg per pound of body weight by intramuscular injection for profound tranquilization. Administer 1 to 2 mg per pound of body weight by intravenous injection to effect.

(2) *Indications for use.* For use as a tranquilizer.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 45. Revise § 522.883 to read as follows:

§ 522.883 Etorphine.

(a) *Specifications.* Each milliliter of solution contains 1 milligram of etorphine hydrochloride.

(b) *Sponsor.* See No. 053923 in § 510.600(c) of this chapter.

(c) *Special considerations.* Distribution is restricted to veterinarians engaged in zoo and exotic animal practice, wildlife management programs, and researchers.

(d) *Conditions of use*—(1) *Amount.* Administered intramuscularly by hand syringe or syringe dart at a suitable dosage level depending upon the species.

(2) *Indications for use.* For the immobilization of wild and exotic animals.

(3) *Limitations.* Do not use in domestic food-producing animals. Do not use 30 days before, or during, the hunting season in free-ranging wild animals that might be used for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 522.900 [Amended]

■ 46. In paragraph (b)(2) of § 522.900, remove ''000856'' and in its place add ''054771''.

■ 47. Revise § 522.914 to read as follows:

§ 522.914 Fenprostalene.

(a) *Specifications.* (1) Each milliliter of solution contains 0.5 milligram (mg) fenprostalene.

(2) Each milliliter of solution contains 0.25 mg fenprostalene.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter for use of product described in paragraph (a)(1) as in paragraph (e)(1) of this section; and for use of product described in paragraph (a)(2) as in paragraph (e)(2) of this section.

(c) *Related tolerances.* See § 556.277 of this chapter.

(d) *Special considerations.* Labeling shall bear the following statements: Women of childbearing age, asthmatics, and persons with bronchial and other respiratory problems should exercise extreme caution when handling this product. It is readily absorbed through the skin and may cause abortion and/or bronchiospasms. Accidental spillage on the skin should be washed off immediately with soap and water.

(e) *Conditions of use*—(1) *Cattle*—(i) *Indications for use and amount*—(A) For feedlot heifers to induce abortion when pregnant 150 days or less, administer 1 mg (2 milliliter (mL)) subcutaneously.

(B) For beef or nonlactating dairy cattle for estrus synchronization, administer a single or two 1-mg (2-mL) doses subcutaneously, 11 to 13 days apart.

(ii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Swine*—(i) *Amount.* Administer a single injection of 0.25 mg (1 mL) subcutaneously.

(ii) *Indications for use.* For the induction of parturition in sows and gilts pregnant at least 112 days.

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 48. Revise § 522.960 to read as follows:

§ 522.960 Flumethasone injectable dosage forms.

■ 49. Revise § 522.960a to read as follows:

§ 522.960a Flumethasone suspension.

(a) *Specifications.* Each milliliter of suspension contains 2 milligrams (mg) of flumethasone.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use in horses*—(1) *Amount.* Administer 6 to 10 mg by intra-articular injection. Dosage is limited to a single injection per week in any one synovial structure.

(2) *Indications for use.* For use in the various disease states involving synovial structures (joints) of horses where excessive synovial fluid of inflammatory origin is present and where permanent structural changes do not exist. Such conditions include arthritis, carpitis, and osselets.

(3) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 50. Revise § 522.960b to read as follows:

§ 522.960b Flumethasone acetate solution.

(a) *Specifications.* Each milliliter of solution contains 2 milligrams (mg) of flumethasone acetate.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* Administer by intramuscular injection as follows: Dogs weighing up to 10 pounds (lbs): 2 mg; dogs weighing 10 to 25 lbs: 4 mg; dogs weighing over 25 lbs: 8 mg. Dosage should be adjusted according to the weight of the animal, the severity of the symptoms, and the response noted. Dosage by injection should not exceed 3 days of therapy. With chronic conditions intramuscular therapy may be followed by oral administration of flumethasone tablets at a daily dose of from 0.0625 to 0.25 mg per animal.

(2) *Indications for use.* For use in certain acute and chronic canine dermatoses of varying etiology to help control the pruritus, irritation, and inflammation associated with these conditions.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 51. Revise § 522.960c to read as follows:

§ 522.960c Flumethasone solution.

(a) *Specifications.* Each milliliter of solution contains 0.5 milligrams (mg) of flumethasone.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use.* It is used as follows:

(1) *Horses*—(i) *Amount.* Administer 1.25 to 2.5 milligrams (mg) daily by intravenous, intramuscular, or intra-articular injection.

(ii) *Indications for use.* For use in the treatment of musculoskeletal conditions due to inflammation, where permanent structural changes do not exist, e.g., bursitis, carpitis, osselets, and myositis; and allergic states, e.g., hives, urticaria, and insect bites.

(iii) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Dogs*—(i) *Amount.* Administer 0.0625 to 0.25 mg daily by intravenous, intramuscular, or subcutaneous injection; 0.125 to 1.0 mg daily by intra-lesional injection, depending on the size and location of the lesion; or 0.166 to 1.0 mg daily by intra-articular injection, depending on the severity of the condition and the size of the involved joint.

(ii) *Indications for use.* For use in the treatment of musculoskeletal conditions

due to inflammation of muscles or joints and accessory structures where permanent structural changes do not exist, e.g., arthritis, osteoarthritis, disc syndrome, and myositis (in septic arthritis, appropriate antibacterial therapy should be concurrently administered); certain acute and chronic dermatoses of varying etiology to help control associated pruritus, irritation, and inflammation; otitis externa in conjunction with topical medication; allergic states, e.g., hives, urticaria, and insect bites; and shock and shock-like states by intravenous administration.

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(3) *Cats*—(i) *Amount.* Administer 0.03125 to 0.125 mg daily by intravenous, intramuscular, or subcutaneous injection.

(ii) *Indications for use.* For use in the treatment of certain acute and chronic dermatoses of varying etiology to help control associated pruritus, irritation, and inflammation.

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 522.970 [Amended]

■ 52. In paragraph (b)(2) of § 522.970, remove ''000856'' and in its place add ''054771''.

■ 53. Revise § 522.995 to read as follows:

§ 522.995 Fluprostenol.

(a) *Specifications.* Each milliliter of solution contains fluprostenol sodium equivalent to 50 micrograms (µg) of fluprostenol.

(b) *Sponsor.* See No. 000859 in § 510.600(c) of this chapter.

(c) *Conditions of use in horses*—(1) *Amount.* Administer 0.55 µg fluprostenol per kilogram of body weight by intramuscular injection.

(2) *Indications for use.* For use in mares for its luteolytic effect to control the timing of estrus in estrous cycling and in clinically anestrous mares that have a corpus luteum.

(3) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 54. In § 522.1010, revise paragraphs (d)(2)(i)(B) and (d)(2)(ii)(B) to read as follows:

§ 522.1010 Furosemide.

* * * * *

(d) * * *

(2) * * *

(i) * * *

(B) *Limitations.* Do not use in horses intended for human consumption.

(ii) * * *

(B) *Limitations.* Do not use in horses intended for human consumption.

* * * * *

■ 55. Revise § 522.1020 to read as follows:

§ 522.1020 Gelatin.

(a) *Specifications.* Each 100 milliliters contains 8 grams of gelatin in a 0.85 percent sodium chloride solution.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* The exact dosage to be administered must be determined after evaluating the animal's condition and will vary according to the size of the animal and the degree of shock. A suggested dosage range for small animals such as dogs is 4 to 8 cubic centimeters per pound body weight. The suggested dosage range for large animals such as sheep, calves, cows, or horses is 2 to 4 cubic centimeters per pound of body weight.

(2) *Indications for use.* For use to restore circulatory volume and maintain blood pressure in animals being treated for shock.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 522.1066 [Amended]

■ 56. In paragraph (b) of § 522.1066, remove ''Nos. 000856 and 000859'' and in its place add ''Nos. 000859 and 054771''.

§ 522.1081 [Amended]

■ 57. In paragraph (b)(1) of § 522.1081, remove ''053501'' and in its place add ''054771''.

§ 522.1083 [Amended]

■ 58. In paragraph (b) of § 522.1083, remove ''000069'' and in its place add ''054771''; and in paragraph (c)(3), remove the first two sentences.

■ 59. Revise § 522.1085 to read as follows:

§ 522.1085 Guaifenesin powder for injection.

(a) *Specifications.* The product is a sterile powder containing guaifenesin. A solution is prepared by dissolving the drug in sterile water for injection to make a solution containing 50 milligrams of guaifenesin per milliliter of solution.

(b) *Sponsors.* See Nos. 037990 and 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use in horses*—(1) *Amount.* Administer 1 milliliter of prepared solution per pound of body weight by rapid intravenous infusion.

(2) *Indications for use.* For use as a muscle relaxant.

(3) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 60. Revise § 522.1086 to read as follows:

§ 522.1086 Guaifenesin solution.

(a) *Specifications.* Each milliliter of solution contains 50 milligrams (mg) of guaifenesin and 50 mg of dextrose.

(b) *Sponsors.* See Nos. 000859 and 037990 in § 510.600(c) of this chapter.

(c) *Conditions of use in horses*—(1) *Amount.* Administer 1 milliliter per pound of body weight by rapid intravenous infusion.

(2) *Indications for use.* For use as a skeletal muscle relaxant.

(3) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 522.1125 [Amended]

■ 61. In paragraph (d)(3) of § 522.1125, remove the first two sentences.

■ 62. Amend § 522.1145 as follows:

■ a. In paragraph (a)(2), remove ''000009'' and in its place add ''054771'';

■ b. In paragraph (b)(2), remove ''053501'' and in its place add ''054771'';

■ c. Revise the section heading and paragraphs (a)(3)(i), (a)(3)(iii), (b)(3)(i), (b)(3)(iii), (c)(3), (d)(3)(iii), (f)(3)(i), and (f)(3)(iii).

The revisions read as follows:

§ 522.1145 Hyaluronate.

(a) * * *

(3) * * *

(i) *Amount.* Small and medium-size joints (carpal, fetlock): 20 mg; larger joint (hock): 40 mg. Treatment may be repeated at weekly intervals for a total of three treatments.

* * * * *

(iii) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(b) * * *

(3) * * *

(i) *Amount.* Small and medium-size joints (carpal, fetlock): 10 mg; larger joint (hock): 20 mg. Treatment may be repeated at weekly intervals for a total of four treatments.

* * * * *

(iii) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(c) * * *

(3) *Conditions of use*—(i) *Amount.* Small and medium-size joints (carpal, fetlock): 20 mg. Treatment may be repeated after 1 or more weeks but not to exceed 2 injections per week for a total of 4 weeks.

(ii) *Indications for use.* For the intra-articular treatment of carpal or fetlock joint dysfunction in horses due to acute or chronic, non-infectious synovitis associated with equine osteoarthritis.

(iii) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(d) * * *

(3) * * *

(iii) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

* * * * *

(f) * * *

(3) * * *

(i) *Amount.* Small and medium-size joints (carpal, fetlock): 22 mg; larger joint (hock): 44 mg. Treatment may be repeated at weekly intervals for a total of three treatments.

* * * * *

(iii) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 63. In § 522.1150, remove footnote 1, and revise the section heading and paragraphs (a) and (c)(3) to read as follows:

§ 522.1150 Hydrochlorothiazide.

(a) *Specifications.* Each milliliter of solution contains 25 milligrams of hydrochlorothiazide.

* * * * *

(c) * * *

(3) *Limitations.* Milk taken from dairy animals during treatment and for 72 hours (6 milkings) after the latest treatment must not be used for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 64. Revise § 522.1155 to read as follows:

§ 522.1155 Imidocarb powder for injection.

(a) *Specifications.* The product is a sterile powder containing imidocarb dipropionate. Each milliliter of constituted solution contains 100 milligrams (mg) of imidocarb base.

(b) *Sponsor.* See No. 000061 in § 510.600(c) of this chapter.

(c) *Special considerations.* Imidocarb dipropionate is sold only under permit issued by the Director of the National Program Planning Staff, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, to licensed or full-time State, Federal, or military veterinarians.

(d) *Conditions of use in horses and zebras*—(1) *Amount.* For *Babesia caballi* infections, administer 2 mg of imidocarb base per kilogram of body weight by intramuscular injection in the neck region, repeating dosage once after 24 hours. For *Babesia equi* infections, administer 4 mg of imidocarb base per kilogram of body weight by intramuscular injection in the neck region, repeating dosage four times at 72-hour intervals.

(2) *Indications for use.* For the treatment of babesiosis (piroplasmosis) caused by *Babesia caballi* and *Babesia equi.*

(3) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 65. Revise § 522.1156 to read as follows:

§ 522.1156 Imidocarb solution.

(a) *Specifications.* Each milliliter of solution contains 120 milligrams (mg) of imidocarb dipropionate.

(b) *Sponsor.* See No. 000061 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* Administer 6.6 mg per kilogram (3 mg per pound) of body weight by intramuscular injection. Repeat the dose after 2 weeks for a total of two treatments.

(2) *Indications for use.* For the treatment of clinical signs of babesiosis and/or demonstrated *Babesia* organisms in the blood.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 522.1182 [Amended]

■ 66. In § 522.1182, in paragraph (b)(2), remove ''000856'' and in its place add ''054771''; and in paragraphs (b)(4) introductory text and (b)(5) introductory text, remove ''053501'' and in its place add ''054771.

■ 67. Add § 522.1185 to read as follows:

§ 522.1185 Isoflupredone.

(a) *Specifications.* Each milliliter of suspension contains 2 milligrams (mg) of isoflupredone acetate.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Cattle*—(i) *Amount.* Administer 10 to 20 mg by intramuscular injection.

(ii) *Indications for use.* For use in the treatment of bovine ketosis. For alleviation of pain associated with generalized and acute localized arthritic conditions; for treating acute hypersensitivity reactions; and as an aid in correcting circulatory defects associated with severe toxicity and shock.

(iii) *Limitations.* Animals intended for human consumption should not be slaughtered within 7 days of last treatment. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Horses and swine*—(i) *Amount*—(A) *Horses.* Administer 5 to 20 mg by intramuscular injection for systemic effect or by intrasynovial injection into a joint cavity, tendon sheath, or bursa for local effect.

(B) *Swine.* The usual dose for a 300-pound animal is 5 mg by intramuscular injection.

(ii) *Indications for use.* For alleviation of pain associated with generalized and acute localized arthritic conditions; for treating acute hypersensitivity reactions; and as an aid in correcting circulatory defects associated with severe toxicity and shock.

(iii) *Limitations.* Animals intended for human consumption should not be slaughtered within 7 days of last treatment. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 68. Revise § 522.1204 to read as follows:

§ 522.1204 Kanamycin.

(a) *Specifications.* Each milliliter of solution contains 50 or 200 milligrams (mg) of kanamycin as kanamycin sulfate.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs and cats*—(1) *Amount.* Administer by subcutaneous or intramuscular injection 5 mg per pound of body weight per day in equally divided doses at 12-hour intervals.

(2) *Indications for use.* For the treatment of bacterial infections due to kanamycin sensitive organisms in dogs and cats.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 522.1222 [Removed]

■ 69. Remove § 522.1222.

§ 522.1222a [Redesignated as § 522.1222 and Amended]

■ 70. Redesignate § 522.1222a as § 522.1222 and in newly designated § 522.1222, in paragraph (b), add ''054771,'' after ''054668,''.

§ 522.1222b [Redesignated as § 522.1223 and Revised]

■ 71. Redesignate § 522.1222b as § 522.1223 and revise it to read as follows:

§ 522.1223 Ketamine, promazine, and aminopentamide.

(a) *Specifications.* Each milliliter of solution contains ketamine hydrochloride equivalent to 100 milligrams (mg) ketamine base activity, 7.5 (mg) of promazine hydrochloride, and 0.0625 mg of aminopentamide hydrogen sulfate.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use in cats*—(1) *Amount.* Administer by intramuscular injection 15 to 20 mg ketamine base per pound of body weight, depending on the effect desired.

(2) *Indications for use.* It is used in cats as the sole anesthetic agent for ovariohysterectomy and general surgery.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 72. Revise § 522.1225 to read as follows:

§ 522.1225 Ketoprofen.

(a) *Specifications.* Each milliliter of solution contains 100 milligrams (mg) of ketoprofen.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use in horses*—(1) *Amount.* Administer by intravenous injection 1.0 mg per pound of body weight once daily for up to 5 days.

(2) *Indications for use.* For alleviation of inflammation and pain associated with musculoskeletal disorders in horses.

(3) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 522.1228 [Removed]

■ 73. Remove reserved § 522.1228.

§ 522.1244 [Redesignated as § 522.1242 and Amended]

■ 74. Redesignate § 522.1244 as § 522.1242 and amend it as follows:

■ a. In paragraph (a), remove ''sterile aqueous'';

■ b. In paragraph (b), remove ''053501'' and in its place add ''054771''; and

■ c. Revise the section heading to read as follows:

§ 522.1242 Levamisole.

* * * * *

§ 522.1260 [Amended]

■ 75. In § 522.1260, in paragraph (b)(1), remove ''000009'' and in its place add ''054771''; and in paragraph (b)(3), remove ''046573'' and in its place add ''054771''.

■ 76. Revise § 522.1289 to read as follows:

§ 522.1289 Lufenuron.

(a) *Specifications.* Each milliliter of suspension contains 10 milligrams (mg) of lufenuron.

(b) *Sponsor.* See No. 058198 in § 510.600(c) of this chapter.

(c) *Conditions of use in cats*—(1) *Amount.* 10 mg per kilogram (4.5 mg per pound) of body weight every 6 months, by subcutaneous injection.

(2) *Indications for use.* For control of flea populations in cats 6 weeks of age and older.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 522.1315 [Amended]

■ 77. In paragraph (b) of § 522.1315, remove ''000069'' and in its place add ''054771''.

■ 78. In § 522.1335, revise the section heading and paragraphs (a) and (c)(3) to read as follows:

§ 522.1335 Medetomidine.

(a) *Specifications.* Each milliliter of solution contains 1.0 milligrams of medetomidine hydrochloride.

* * * * *

(c) * * *

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 79. In § 522.1362, revise the section heading and paragraphs (c)(1) and (3) to read as follows:

§ 522.1362 Melarsomine powder for injection.

* * * * *

(c) * * *

(1) *Amount.* Administer only by deep intramuscular injection in the lumbar muscles (L_3–L_5).

* * * * *

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 522.1372 [Amended]

■ 80. In paragraph (b) of § 522.1372, remove ''000009'' and in its place add ''054771''.

■ 81. Revise § 522.1380 to read as follows:

§ 522.1380 Methocarbamol.

(a) *Specifications.* Each milliliter of solution contains 100 milligrams (mg) of methocarbamol.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount*—(i) *Dogs and cats.* Administer by intravenous injection 20 mg per pound of body weight for moderate conditions or 25 to 100 mg per pound of body weight for severe conditions (tetanus and strychnine poisoning). The total cumulative dose should not to exceed 150 mg per pound of body weight.

(ii) *Horses.* Administer by intravenous injection 2 to 10 mg per pound of body weight for moderate conditions or 10 to 25 mg per pound of body weight for severe conditions (tetanus). Additional amounts may be needed to relieve residual effects and to prevent recurrence of symptoms.

(2) *Indications for use.* As an adjunct for treating acute inflammatory and traumatic conditions of the skeletal muscles and to reduce muscular spasms.

(3) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 522.1410 [Amended]

■ 82. In paragraph (b) of § 522.1410, remove ''000009 and 054628'' and in its place add ''054628 and 054771''.

■ 83. In § 522.1451, in paragraph (b), remove ''000856'' and in its place add ''054771''; and revise the section heading to read as follows:

§ 522.1451 Moxidectin microspheres for injection.

* * * * *

■ 84. In § 522.1452, revise the section heading, paragraph (a), the heading of paragraph (c), and paragraph (c)(3) to read as follows:

§ 522.1452 Nalorphine.

(a) *Specifications.* Each milliliter of solution contains 5 milligrams of nalorphine hydrochloride.

* * * * *

(c) *Conditions of use in dogs*—

* * * * *

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 85. In § 522.1465, in paragraph (c)(3), remove the first two sentences; and revise the section heading and paragraph (a) to read as follows:

§ 522.1465 Naltrexone.

(a) *Specifications.* Each milliliter of solution contains 50 milligrams of naltrexone hydrochloride.

* * * * *

§ 522.1468 [Amended]

■ 86. In paragraph (b) of § 522.1468, remove ''000856'' and in its place add ''054771''.

■ 87. Revise § 522.1484 to read as follows:

§ 522.1484 Neomycin.

(a) *Specifications.* Each milliliter of solution contains 50 milligrams (mg) of neomycin sulfate (equivalent to 35 mg of neomycin base).

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs and cats*—(1) *Amount.* Administer 5 mg per pound of body weight daily by intramuscular or intravenous injection, divided into portions administered every 6 to 8 hours for 3 to 5 days.

(2) *Indications for use.* For the treatment of acute and chronic bacterial infections due to organisms susceptible to neomycin.

(3) *Limitations.* Not for parenteral use in food-producing animals because of prolonged residues in edible tissues. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 88. In § 522.1503, revise the section heading and paragraphs (a) and (c) to read as follows:

§ 522.1503 Neostigmine.

(a) *Specifications.* Each milliliter of solution contains 2 milligrams (mg) neostigmine methylsulfate.

* * * * *

(c) *Conditions of use*—(1) *Amount.* Administer to cattle and horses at a dosage level of 1 mg per (/) 100 pounds (lbs) of body weight subcutaneously. Administer to sheep at a dosage level of 1 to 1½ mg/100 lbs body weight subcutaneously. Administer to swine at a dosage level of 2 to 3 mg/100 lbs body weight intramuscularly. These doses may be repeated as indicated.

(2) *Indications for use.* For treating rumen atony; initiating peristalsis which causes evacuation of the bowel; emptying the urinary bladder; and stimulating skeletal muscle contractions.

(3) *Limitations.* Not for use in animals producing milk, since this use will result in contamination of the milk. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 89. In § 522.1610, revise the section heading and paragraphs (a) and (c) to read as follows:

§ 522.1610 Oleate sodium.

(a) *Specifications.* Each milliliter of solution contains 50 milligrams (mg) of sodium oleate.

* * * * *

(c) *Conditions of use in horses*—(1) *Amount.* Administer by parenteral injection depending on the area of response desired. An injection of 1 milliliter (mL) will produce a response of approximately 15 square centimeters. Do not inject more than 2 mL per injection site. Regardless of the number of injection sites, the total volume used should not exceed 10 mL.

(2) *Indications for use.* It is used in horses to stimulate infiltration of cellular blood components that subsequently differentiate into fibrous and/or fibrocartilagenous tissue.

(3) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 90. In § 522.1620, revise paragraph (c) to read as follows:

§ 522.1620 Orgotein for injection.

* * * * *

(c) *Conditions of use*—(1) *Horses*—(i) *Amount.* Administer by deep intramuscular injection at a dosage level of 5 milligrams (mg) every other day for 2 weeks and twice weekly for 2 to 3 more weeks. Severe cases, both acute and chronic, may benefit more from daily therapy initially. Dosage may be continued beyond 5 weeks if satisfactory improvement has not been achieved.

(ii) *Indications for use.* It is used in the treatment of soft tissue inflammation associated with the musculoskeletal system.

(iii) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Dogs*—(i) *Amount.* Administer by subcutaneous injection 5 mg daily for 6 days, and thereafter, every other day for 8 days. In less severe conditions, shorter courses of therapy may be indicated.

(ii) *Indications for use.* It is used for the relief of inflammation associated with ankylosing spondylitis, spondylosis, and disc disease. When severe nerve damage is present, response will occur much more slowly, if at all.

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 91. In § 522.1660a, in paragraph (b), remove ''000069'' and add ''054771'' after ''048164''; and in paragraph (e)(1)(ii), revise the last sentence to read as follows:

§ 522.1660a Oxytetracycline solution, 200 milligrams/milliliter.

* * * * *

(e) * * *

(1) * * *

(ii) * * * Milk taken from animals during treatment and for 96 hours after the last treatment must not be used for food.

* * * * *

§ 522.1662a [Amended]

■ 92. In § 522.1662a, in paragraphs (c)(2), (d)(2), and (e)(2), remove ''000069'' and in its place add ''054771''; and in paragraph (h)(2), remove ''055529 and 059130'' and in its place add ''000859 and 055529''.

§ 522.1662b [Amended]

■ 93. In paragraph (b) of § 522.1662b, remove ''000069'' and in its place add ''054771''.

■ 94. In § 522.1664, revise paragraph (d)(3) to read as follows:

§ 522.1664 Oxytetracycline and flunixin.

* * * * *

(d) * * *

(3) *Limitations.* Discontinue treatment at least 21 days prior to slaughter of cattle. This drug product is not approved for use in female dairy cattle 20 months of age or older, including dry dairy cows. Use in these cattle may cause drug residues in milk and/or in calves born to these cows. A withdrawal period has not been established in preruminating calves. Do not use in calves to be processed for veal. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 522.1680 [Amended]

■ 95. In paragraph (b) of § 522.1680, remove ''000856,'' and add ''054771'' after ''045628,''.

■ 96. Revise § 522.1696 to read as follows:

§ 522.1696 Penicillin G procaine injectable dosage forms.

§ 522.1696a [Amended]

■ 97. In § 522.1696a, in paragraphs (b)(1) and (3), remove ''000856'' and in its place add ''054771''; and in paragraph (d)(2)(iii), remove ''055529, 059130, and 061623'' and in its place add ''000859, 055529, and 061623''.

§ 522.1696b [Amended]

■ 98. In § 522.1696b, in paragraphs (b)(1), (d)(2)(i)(A), and (d)(2)(iii)(A),

remove ''053501'' and in its place add ''054771''.

§ 522.1696c [Amended]

■ 99. In § 522.1696c, in paragraph (b), remove ''053501'' and in its place add ''054771''; remove paragraph (c); and redesignate paragraph (d) as paragraph (c).

■ 100. In § 522.1698, revise the section heading and paragraphs (a), (b), (c)(1)(i), (c)(1)(iii), (c)(2)(i), and (c)(2)(iii) to read as follows:

§ 522.1698 Pentazocine.

(a) *Specifications.* Each milliliter of solution contains pentazocine lactate equivalent to 30 milligrams (mg) of pentazocine base.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) * * *

(1) * * *

(i) *Amount.* Administer 0.15 mg pentazocine base per pound of body weight daily by intravenous or intramuscular injection. In cases of severe pain, a second dose is recommended by intramuscular injection 10 to 15 minutes after the initial dose at the same level.

* * * * *

(iii) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) * * *

(i) *Amount.* Administer 0.75 to 1.50 mg of pentazocine base per pound of body weight by intramuscular injection.

* * * * *

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 101. Revise § 522.1704 to read as follows:

§ 522.1704 Pentobarbital.

(a) *Specifications.* Each milliliter of solution contains 64.8 milligrams (mg) of sodium pentobarbital.

(b) *Sponsor.* See No. 000061 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* The drug is administered intravenously ''to effect''. For general surgical anesthesia, the usual dose is 11 to 13 mg per pound of body weight. For sedation, the usual dose is approximately 2 mg per pound of body weight. For relieving convulsive seizures caused by strychnine in dogs, the injection should be administered intravenously ''to effect''. The drug may be administered intraperitoneally. When given intraperitoneally, it is administered at the same dosage level as for intravenous administration.

(2) *Indications for use.* The drug is indicated for use as a general anesthetic in dogs and cats. Although it may be used as a general surgical anesthetic for horses, it is usually given at a lower dose to cause sedation and hypnosis and may be supplemented with a local anesthetic. It may also be used in dogs for the symptomatic treatment of strychnine poisoning.

(3) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 102. Revise § 522.1720 to read as follows:

§ 522.1720 Phenylbutazone.

(a) *Specifications*—(1) Each milliliter of solution contains 100 milligrams (mg) of phenylbutazone.

(2) Each milliliter of solution contains 200 mg of phenylbutazone.

(b) *Sponsors.* See sponsor numbers in § 510.600(c) of this chapter for use as in paragraph (c) of this section:

(1) No. 054771 for use of product described in paragraph (a)(1) as in paragraph (c) of this section.

(2) Nos. 000061, 000859, 054771, and 061623 for use of product described in paragraph (a)(2) as in paragraph (c) of this section.

(3) Nos. 054628 and 058005 for use of product described in paragraph (a)(2) as in paragraph (c)(2) of this section.

(c) *Conditions of use*—(1) *Dogs*—(i) *Amount.* Administer by intravenous injection 10 mg per pound of body weight daily in three divided doses, not to exceed 800 mg daily regardless of weight. Limit intravenous administration to 2 successive days. Oral medication may follow.

(ii) *Indications for use.* It is used for the relief of inflammatory conditions associated with the musculoskeletal system.

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Horses*—(i) *Amount.* Administer by intravenous injection 1 to 2 grams (g) per 1,000 pounds of body weight daily in three divided doses, not to exceed 4 g daily. Limit intravenous administration to not more than 5 successive days.

(ii) *Indications for use.* For the relief of inflammatory conditions associated with the musculoskeletal system.

(iii) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 103. In § 522.1820, revise the section heading and paragraph (c) to read as follows:

§ 522.1820 Pituitary luteinizing hormone powder for injection.

* * * * *

(c) *Conditions of use*—(1) *Amount.* Cattle and horses: 25 milligrams; swine: 5 milligrams; sheep: 2.5 milligrams; and dogs: 1.0 milligram. Preferably given by intravenous injection, it may be administered subcutaneously. Treatment may be repeated in 1 to 4 weeks, or as indicated.

(2) *Indications for use.* As an aid in the treatment of breeding disorders related to pituitary hypofunction in cattle, horses, swine, sheep, and dogs.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 104. Revise § 522.1862 to read as follows:

§ 522.1862 Pralidoxime powder for injection.

(a) *Specifications.* Each vial contains 1 gram (g) of pralidoxime chloride powder for mixing with 20 cubic centimeters of sterile water for injection. Each milliliter of constituted solution contains 50 milligrams (mg) pralidoxime chloride.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* Administer as soon as possible after exposure to the poison. Before administration of the sterile pralidoxime chloride, atropine is administered intravenously at a dosage rate of 0.05 mg per pound of body weight, followed by administration of an additional 0.15 mg of atropine per pound of body weight administered intramuscularly. Then the appropriate dosage of sterile pralidoxime chloride is administered slowly intravenously. The dosage rate for sterile pralidoxime chloride when administered to horses is 2 g per horse. When administered to dogs and cats, it is 25 mg per pound of body weight. For small dogs and cats, sterile pralidoxime chloride may be administered either intraperitoneally or intramuscularly. A mild degree of atropinization should be maintained for at least 48 hours. Following severe poisoning, a second dose of sterile pralidoxime chloride may be given after 1 hour if muscle weakness has not been relieved.

(2) *Indications for use.* It is used in horses, dogs, and cats as an antidote in the treatment of poisoning due to those pesticides and chemicals of the organophosphate class which have anticholinesterase activity in horses, dogs, and cats.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 105. Revise § 522.1881 to read as follows:

§ 522.1881 Prednisolone acetate.

(a) *Specifications.* Each milliliter of suspension contains 25 milligrams (mg) of prednisolone acetate.

(b) *Sponsor.* See No. 000061 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* The drug is administered to horses intra-articularly at a dosage level of 50 to 100 mg. The dose may be repeated when necessary. The drug is administered to dogs and cats intramuscularly at a dosage level of 10 to 50 mg. The dosage may be repeated when necessary. If the condition is of a chronic nature, an oral corticosteroid may be given as a maintenance dosage. The drug may be given intra-articularly to dogs and cats at a dosage level of 5 to 25 mg. The dose may be repeated when necessary after 7 days for two or three doses.

(2) *Indications for use.* The drug is indicated in the treatment of dogs, cats, and horses for conditions requiring an anti-inflammatory agent. The drug is indicated for the treatment of acute musculoskeletal inflammations such as bursitis, carpitis, and spondylitis. The drug is indicated as supportive therapy in nonspecific dermatosis such as summer eczema and atopy. The drug may be used as supportive therapy pre- and postoperatively and for various stress conditions when corticosteroids are required while the animal is being treated for a specific condition.

(3) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 106. Revise § 522.1884 to read as follows:

§ 522.1884 Prednisolone sodium succinate.

(a) *Specifications.* Each milliliter of prednisolone sodium succinate injection contains: Prednisolone sodium succinate equivalent in activity to 10, 20, or 50 milligrams (mg) of prednisolone.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter for products containing 10, 20, and 50 mg equivalent prednisolone activity per milliliter for use in horses, dogs, and cats as provided in paragraphs (c)(1)(i), (ii), and (iii) of this section.

(c) *Conditions of use*—(1) *Amount and indications for use*—(i) *Horses.* Administer 50 to 100 mg as an initial dose by intravenous injection over a period of one-half to 1 minute, or by intramuscular injection, and may be repeated in inflammatory, allergic, or other stress conditions at intervals of 12, 24, or 48 hours, depending upon the size of the animal, the severity of the condition and the response to treatment.

(ii) *Dogs.* Administer by intravenous injection at a range of 2.5 to 5 mg per pound of body weight as an initial dose followed by maintenance doses at 1, 3, 6, or 10 hour intervals, as determined by the condition of the animal, for treatment of shock.

(iii) *Dogs and cats.* Administer by intramuscular injection for treatment of inflammatory, allergic, and less severe stress conditions, where immediate effect is not required, at 1 to 5 mg ranging upward to 30 to 50 mg in large breeds of dogs. Dosage may be repeated in 12 to 24 hours and continued for 3 to 5 days if necessary. If permanent corticosteroid effect is required, oral therapy with prednisolone tablets may be substituted.

(2) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 107. Revise § 522.1885 to read as follows:

§ 522.1885 Prednisolone tertiary butylacetate.

(a) *Specifications.* Each milliliter of suspension contains 20 milligrams (mg) of prednisolone tertiary butylacetate.

(b) *Sponsor.* See No. 050604 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount*—(i) *Horses:* Administer by intramuscular injection 100 to 300 mg or by intrasynovial injection at a dosage level of 50 to 100 mg. Retreatment of horses in 24 to 48 hours may be necessary, depending on the general condition of the animal and the severity and duration of the disease.

(ii) *Dogs and cats:* Administer by intramuscular injection 1 mg per 5 pounds of body weight or intrasynovially at a dosage level of 10 to 20 mg.

(2) *Indications for use.* It is used as an anti-inflammatory agent in horses, dogs, and cats.

(3) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 108. Revise § 522.1890 to read as follows:

§ 522.1890 Sterile prednisone suspension.

(a) *Specifications.* Each milliliter of suspension contains 10 to 40 milligrams (mg) of prednisone.

(b) *Sponsor.* See No. 000061 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount*—(i) *Horses.* Administer 100 to 400 mg by intramuscular injection, repeating if necessary.

(ii) *Dogs and cats.* Administer 0.25 to 1.0 mg per pound of body weight by intramuscular injection for 3 to 5 days or until a response is noted. Treatment may be continued with an orally administered dose.

(2) *Indications for use.* It is used for conditions requiring an anti-inflammatory agent.

(3) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 109. Revise § 522.1920 to read as follows:

§ 522.1920 Prochlorperazine and isopropamide.

(a) *Specifications.* Each milliliter of solution contains prochlorperazine edisylate equivalent to 4 milligrams (mg) prochlorperazine and isopropamide iodide equivalent to 0.28 mg of isopropamide.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* (i) Dosage is administered by subcutaneous injection twice daily as follows:

Weight of animal in pounds	Dosage in milliliters
Up to 4	0.25
5 to 14	0.5–1
15 to 30	2–3
30 to 45	3–4
45 to 60	4–5
Over 60	6

(ii) Following the last injection, administer prochlorperazine and isopropamide sustained release capsules as indicated.

(2) *Indications for use.* For use in dogs and cats in which gastrointestinal disturbances are associated with emotional stress.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 522.1940 [Amended]

■ 110. In § 522.1940, in paragraph (a)(1), remove ''000856'' and in its place add ''054771''.

■ 111. In § 522.1962, in paragraph (b)(1), remove ''000856'' and in its place add

''054771''; and revise the section heading and paragraph (c)(1)(iii) to read as follows:

§ 522.1962 Promazine.

* * * * *

(c) * * *

(1) * * *

(iii) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 112. Revise § 522.2002 to read as follows:

§ 522.2002 Propiopromazine.

(a) *Specifications.* Each milliliter of solution contains 5 or 10 milligrams (mg) propiopromazine hydrochloride.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs and cats*—(1) *Amounts and indications for use.* Administer 0.05 to 0.5 mg per pound of body weight by intravenous or intramuscular injection for tranquilization. Administer 0.25 mg per pound of body weight by intravenous injection as a preanesthetic.

(2) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 113. In § 522.2005, in paragraph (b)(3), remove ''000856'' and in its place add ''054771''; and add paragraph (c)(3) to read as follows:

§ 522.2005 Propofol.

* * * * *

(c) * * *

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 114. Revise § 522.2012 to read as follows:

§ 522.2012 Prostalene.

(a) *Specifications.* Each milliliter of solution contains 1 milligram of prostalene.

(b) *Sponsor.* No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use in horses*—(1) *Amount.* Administer 5 micrograms per kilogram of body weight as a single subcutaneous injection.

(2) *Indications for use.* For the control of estrus in mares.

(3) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 115. Revise § 522.2063 to read as follows:

§ 522.2063 Pyrilamine.

(a) *Specifications.* Each milliliter of solution contains 20 milligrams (mg) of pyrilamine maleate.

(b) *Sponsors.* See sponsor numbers in § 510.600(c) of this chapter for uses in paragraph (c) of this section.

(1) No. 000061 for use as in paragraph (c)(1)(i), (2), and (3) of this section.

(2) No. 061623 for use as in paragraph (c)(1)(ii), (2), and (3) of this section.

(c) *Conditions of use*—(1) *Amount*—(i) Horses, 40 to 60 mg per 100 pounds (lbs) body weight; foals, 20 mg/100 lbs body weight. Administer by intramuscular, subcutaneous, or intravenous injection. Dosage may be repeated every 6 to 12 hours whenever necessary.

(ii) Horses, 40 to 60 mg/100 lbs body weight; foals, 20 mg/100 lbs body weight. Administer by slow intravenous injection. Dosage may be repeated every 6 to 12 hours if necessary.

(2) *Indications for use.* It is intended for treating horses in conditions in which antihistaminic therapy may be expected to lead to alleviation of some signs of disease.

(3) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 116. In § 522.2076, revise paragraph (c)(3) to read as follows:

§ 522.2076 Romifidine.

* * * * *

(c) * * *

(3) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 117. In § 522.2100, revise the section heading and paragraphs (a)(1), (a)(3), (b)(1), (b)(3), and (d)(2) to read as follows:

§ 522.2100 Selenium and vitamin E.

(a)(1) *Specifications.* Each milliliter of emulsion contains 5.48 milligrams (mg) sodium selenite (equivalent to 2.5 mg selenium) and 50 mg of vitamin E (68 I.U.) (as d-alpha tocopheryl acetate).

* * * * *

(3) *Conditions of use in horses*—(i) *Amount.* Administer 1 milliliter (mL) per (/) 100 pounds (lbs) of body weight by intravenous injection or by deep intramuscular injection in divided doses in two or more sites in the gluteal or cervical muscles. Administration may be repeated at 5 to 10 day intervals.

(ii) *Indications for use.* For the prevention and treatment of selenium-tocopherol deficiency syndrome in horses.

(iii) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(b)(1) *Specifications.* Each milliliter contains 2.19 mg of sodium selenite (equivalent to 1 mg of selenium), 50 mg of vitamin E (68 I.U.) (as d-alpha tocopheryl acetate).

* * * * *

(3) *Conditions of use in dogs*—(i) *Amount.* Administer by subcutaneous or intramuscular injection in divided doses in two or more sites at 1 mL/20 lbs of body weight with a minimum dosage of ¼ mL and a maximum dosage of 5 mL. The dose is repeated at 3-day intervals until a satisfactory therapeutic response is observed. A maintenance regimen is then initiated which consists of 1 mL per 40 lbs of body weight with a minimum dosage of ¼ mL which is repeated every 3 days or 7 days, or longer, as required to maintain continued improvement or an asymptomatic condition; or the drug may be used in capsule form for oral maintenance therapy.

(ii) *Indications for use.* As an aid in alleviating and controlling inflammation, pain, and lameness associated with certain arthropathies in dogs.

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

* * * * *

(d) * * *

(2) *Sponsors.* See Nos. 000061 and 054771 in § 510.600(c) of this chapter.

* * * * *

§ 522.2120 [Amended]

■ 118. In paragraph (b) of § 522.2120, remove ''000009'' and in its place add ''054771''.

§ 522.2121 [Amended]

■ 119. In paragraph (b) of § 522.2121, remove ''000009'' and in its place add ''054771''.

■ 120. Revise § 522.2150 to read as follows:

§ 522.2150 Stanozolol.

(a) *Specifications.* Each milliliter of suspension contains 50 milligrams (mg) of stanozolol.

(b) *Sponsor.* No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount*—(i) *Dogs and cats.* For cats and small breeds of dogs: 25 mg. For larger dogs: 50 mg. Administer by deep intramuscular injection in the thigh at weekly intervals, for several weeks.

(ii) *Horses.* Administer 25 mg per 100 pounds of body weight by deep intramuscular injection in the gluteal region at weekly intervals, for not more than 4 weeks.

(2) *Indications for use.* For use as an anabolic steroid treatment.

(3) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 121. Revise § 522.2220 to read as follows:

§ 522.2220 Sulfadimethoxine.

(a) *Specifications.* Each milliliter of solution contains:

(1) 100 milligrams (mg) of sulfadimethoxine sodium.

(2) 400 mg of sulfadimethoxine sodium.

(b) *Sponsors.* See sponsor numbers in § 510.600(c) of this chapter for use as in paragraph (d) of this section.

(1) No. 054628 for use of the product described in paragraph (a)(1) as in paragraph (d)(1) of this section.

(2) No. 054771 for use of the product described in paragraph (a)(2) as in paragraphs (d)(2), (3), and (4) of this section.

(3) Nos. 000859, 057561, and 061623 for use of the product described in paragraph (a)(2) as in paragraph (d)(4) of this section.

(c) *Related tolerances.* See § 556.640 of this chapter.

(d) *Conditions of use*—(1) *Dogs*—(i) *Amount.* Administer by subcutaneous, intramuscular, or intravenous injection at an initial dose of 25 mg per pound of body weight followed by 12.5 mg per pound of body weight every 24 hours thereafter. Continue treatment until the animal is free from symptoms for 48 hours.

(ii) *Indications for use.* For use in the treatment of sulfadimethoxine-susceptible bacterial infections in dogs.

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Dogs and cats*—(i) *Amount.* Administer by intravenous or subcutaneous injection at an initial dose of 55 mg per kilogram of body weight followed by 27.5 mg per kilogram of body weight every 24 hours.

(ii) *Indications for use.* For the treatment of respiratory, genitourinary tract, enteric, and soft tissue infections when caused by *Streptococci, Staphylococci, Escherichia, Salmonella, Klebsiella, Proteus,* or *Shigella* organisms sensitive to sulfadimethoxine, and in the treatment of canine bacterial enteritis associated with coccidiosis and canine Salmonellosis.

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(3) *Horses*—(i) *Amount.* Administer by intravenous injection at an initial dose of 55 mg per kilogram of body weight followed by 27.5 mg per kilogram of body weight every 24 hours until the patient is asymptomatic for 48 hours.

(ii) *Indications for use.* For the treatment of respiratory disease caused by Streptococcus equi (strangles).

(iii) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(4) *Cattle*—(i) *Amount.* Administer an initial dose of 25 mg per pound of body weight by intravenous injection followed by 12.5 mg per pound of body weight every 24 hours until the animal is asymptomatic for 48 hours.

(ii) *Indications for use.* For the treatment of bovine respiratory disease complex (shipping fever complex) and bacterial pneumonia associated with *Pasteurella* spp. sensitive to sulfadimethoxine; necrotic pododermatitis (foot rot) and calf diphtheria caused by *Fusobacterium necrophorum* sensitive to sulfadimethoxine.

(iii) *Limitations.* Milk taken from animals during treatment and for 60 hours (5 milkings) after the latest treatment must not be used for food. Do not administer within 5 days of slaughter. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.

■ 122. Revise § 522.2240 to read as follows:

§ 522.2240 Sulfaethoxypyridazine.

(a) *Specifications.* The drug is an aqueous solution of sulfaethoxypyridazine.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.650 of this chapter.

(d) *Conditions of use in cattle*—(1) *Amount.* Administer 2.5 grams per 100 pounds of body weight per day by intravenous injection for not more than 4 days; or first treatment may be followed by 3 days of treatment with sulfaethoxypyridazine in drinking water or tablets in accordance with §§ 520.2240a(e) and 520.2240b(e) of this chapter.

(2) *Indications for use.* For treatment of respiratory infection (pneumonia, shipping fever), foot rot, calf scours; as adjunctive therapy in septicemia accompanying mastitis and metritis.

(3) *Limitations.* Do not treat within 16 days of slaughter. Milk that has been taken from animals during treatment and for 72 hours (6 milkings) after the latest treatment must not be used for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 522.2340 [Amended]

■ 123. In paragraph (b) of § 522.2340, remove ''000069'' and in its place add ''054771''.

§ 522.2404 [Amended]

■ 124. In paragraph (b) of § 522.2404, remove ''000856'' and in its place add ''054771''.

■ 125. Revise § 522.2424 to read as follows:

§ 522.2424 Thiamylal.

(a) *Specifications.* The drug is a sterile powder. It is reconstituted with sterile distilled water, water for injection, or sodium chloride injection, to a desired concentration of 0.5 to 4 percent sodium thiamylal.

(b) *Sponsors.* See Nos. 054628 and 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* Administer by intravenous injection to effect. The average single dose is:

(i) *Dogs and cats:* 8 milligrams (mg) per pound of body weight (when used with a preanesthetic, generally one-half the normal dose).

(ii) *Swine:* 40 mg per 5 pounds (lbs) of body weight.

(iii) *Horses:* Light anesthesia, 1 gram per 500 lbs to 1,100 lbs of body weight; deep anethesia, 1 gram per 300 lbs of body weight (40 mg/12 lbs of body weight).

(iv) *Cattle:* Short duration, 20 mg/5 lbs of body weight; longer duration, 40 mg/7 lbs of body weight.

(2) *Indications for use.* It is used as an ultra-short-acting anesthetic in dogs, cats, swine, horses, and cattle.

(3) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 126. Revise § 522.2444 to read as follows:

§ 522.2444 Thiopental injectable dosage forms.

■ 127. Revise § 522.2444a to read as follows:

§ 522.2444a Thiopental powder for injection.

(a) *Specifications.* The drug contains sodium thiopental powder for constitution with sterile water for injection.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs and cats*—(1) *Amount.* Administer by intravenous injection as follows:

(i) 6 to 9 milligrams (mg) per pound of body weight for brief anesthesia (6 to 10 minutes).

(ii) 10 to 12 mg per pound of body weight for anesthesia of 15 to 25 minutes duration.

(2) *Indications for use.* It is used as an anesthetic for intravenous administration to dogs and cats during short to moderately long surgical and other procedures. It is also used to induce anesthesia in dogs and cats which then have surgical anesthesia maintained by use of a volatile anesthetic.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 128. Revise § 522.2444b to read as follows:

§ 522.2444b Thiopental and pentobarbital powder for injection.

(a) *Specifications.* Each gram of powder contains 750 milligrams (mg) of sodium thiopental and 250 mg of sodium pentobarbital powder for dilution with sterile water for injection.

(b) *Sponsor.* See No. 061623 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* For total anesthesia, it is given at approximately 10 to 12 mg per pound of body weight over a period of 3.5 to 5 minutes. When preanesthetic medication is used, wait at least an hour before administering thiopental and sodium pentobarbital for injection, and the dosage necessary for anesthesia is reduced. Usually ½ to ⅔ the normal amount is adequate.

(2) *Indications for use.* It is used as an anesthetic for intravenous administration to dogs and cats during short to moderately long surgical procedures.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 129. Revise § 522.2470 to read as follows:

§ 522.2470 Tiletamine and zolazepam for injection.

(a) *Specifications.* The drug is a sterile powder. Each milliliter of constituted solution contains tiletamine hydrochloride equivalent to 50 milligrams (mg) of tiletamine base and zolazepam hydrochloride equivalent to 50 mg of zolazepam base.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs and cats*—(1) *Amount.* Expressed as milligrams of the drug combination:

(i) *Healthy dogs:* An initial intramuscular dosage of 3 to 4.5 mg per pound of body weight for diagnostic purposes; 4.5 to 6 mg per pound of body weight for minor procedures of short duration such as repair of lacerations and wounds, castrations, and other procedures requiring mild to moderate analgesia. Supplemental doses when required should be less than the initial dose and the total dose given should not exceed 12 mg per pound of body weight. The maximum total safe dose is 13.6 milligrams per pound of body weight.

(ii) *Healthy cats:* An initial intramuscular dosage of 4.4 to 5.4 mg per pound of body weight for such procedures as dentistry, treatment of abscesses, foreign body removal, and related types of surgery; 4.8 to 5.7 mg per pound of body weight for minor procedures requiring mild to moderate analgesia, such as repair of lacerations, castrations, and other procedures of short duration. Initial dosages of 6.5 to 7.2 mg per pound of body weight are recommended for ovariohysterectomy and onychectomy. When supplemental doses are required, such individual supplemental doses should be given in increments that are less than the initial dose, and the total dose given (initial dose plus supplemental doses) should not exceed the maximum allowable safe dose of 32.7 mg per pound of body weight.

(2) *Indications for use.* For restraint or for anesthesia combined with muscle relaxation in cats and in dogs for restraint and minor procedures of short duration (30 minutes) requiring mild to moderate analgesia.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 130. Revise § 522.2474 to read as follows:

§ 522.2474 Tolazoline.

(a) *Specifications.* Each milliliter of solution contains tolazoline hydrochloride equivalent to 100 milligrams (mg) of base activity.

(b) *Sponsor.* See No. 061690 in § 510.600(c) of this chapter.

(c) *Conditions of use in horses*—(1) *Amount.* Administer slowly by intravenous injection 4 mg per kilogram of body weight or 1.8 mg per pound (4 milliliters (mL) per 100 kilograms or 4 mL per 220 pounds).

(2) *Indications for use.* For use in horses when it is desirable to reverse the effects of sedation and analgesia caused by xylazine.

(3) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 522.2477 [Amended]

■ 131. In paragraph (b)(3) of § 522.2477, remove ''000856'' and in its place add ''054771''.

§ 522.2478 [Amended]

■ 132. In paragraph (b) of § 522.2478, remove ''000856'' and in its place add ''054771''.

■ 133. Revise § 522.2582 to read as follows:

§ 522.2582 Trifluprom azine.

(a) *Specifications.* Each milliliter of solution contains 20 milligrams (mg) of trifluprom azine hydrochloride.

(b) *Sponsor.* See No. 054771 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount*—(i) *Dogs.* Administer by intravenous injection at a dosage of 0.5 to 1 mg per pound of body weight daily, or by intramuscular injection at a dosage of 1 to 2 mg per pound of body weight daily.

(ii) *Cats.* Administer by intramuscular injection at a dosage of 2 to 4 mg per pound of body weight daily.

(iii) *Horses.* Administer by intravenous or intramuscular injection at a dosage of 10 to 15 mg per 100 pounds of body weight daily to a maximum dose of 100 mg.

(2) *Indications for use.* For use in dogs, cats, and horses to relieve anxiety and to help control psychomotor overactivity as well as to increase the tolerance of animals to pain and pruritus. The drug is indicated in various office and clinical procedures which require the aid of a tranquilizer, antiemetic, or preanesthetic.

(3) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 134. In § 522.2610, in paragraph (b), remove ''000856'' and in its place add ''054771''; remove paragraph (c); redesignate paragraph (d) as paragraph (c); add new paragraph (c)(1)(iii); and revise newly redesignated paragraph (c)(2)(iii) to read as follows:

§ 522.2610 Trimethoprim and sulfadiazine.

* * * * *

(c) * * *

(1) * * *

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) * * *

(iii) *Limitations.* Do not use in horses intended for human consumption.

Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 135. In § 522.2615, revise the section heading and paragraphs (a), (b), and (d) to read as follows:

§ 522.2615 Tripelennamine.

(a) *Specifications.* Each milliliter of solution contains 20 milligrams (mg) of tripelennamine hydrochloride.

(b) *Sponsors.* See Nos. 000859 and 054771 in § 510.600(c) of this chapter.

* * * * *

(d) *Conditions of use*—(1) *Dogs and cats*—(i) *Amount.* Administer 0.5 mg per pound of body weight by intramuscular injection.

(ii) *Indications for use.* For use in treating conditions in which antihistaminic therapy may be expected to lead to alleviation of some signs of disease.

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Horses*—(i) *Amount.* Administer 0.5 mg per pound of body weight by intramuscular injection.

(ii) *Indications for use.* For use in treating conditions in which antihistaminic therapy may be expected to lead to alleviation of some signs of disease.

(iii) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(3) *Cattle*—(i) *Amount.* Administer 0.5 mg per pound of body weight by intravenous or intramuscular injection.

(ii) *Indications for use.* For use in treating conditions in which antihistaminic therapy may be expected to lead to alleviation of some signs of disease.

(iii) *Limitations.* Treated cattle must not be slaughtered for food during treatment and for 4 days following the last treatment. Milk that has been taken during treatment and for 24 hours (two milkings) after the last treatment must not be used for food. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 136. In § 522.2640, redesignate paragraphs (d) and (e) as paragraphs (c) and (d), respectively; and revise paragraphs (a), (b), and newly designated (d)(1)(iii), (d)(3)(i), and (d)(3)(iii) to read as follows:

§ 522.2640 Tylosin.

(a) *Specifications.* Each milliliter of solution contains 50 or 200 milligrams of tylosin activity (as tylosin base).

(b) *Sponsors.* See sponsor numbers in § 510.600(c) of this chapter for use as in paragraph (d) of this section.

(1) No. 000986 for use in paragraphs (d)(1), (2), and (3) of this section.

(2) No. 000010 for use as in paragraphs (d)(1) and (2) of this section.

* * * * *

(d) * * *

(1) * * *

(iii) *Limitations.* Administer intramuscularly for not more than 5 consecutive days. Continue treatment 24 hours after symptoms disappear. Use a 50-milligram-per-milliliter solution for calves weighing less than 200 pounds. Do not inject more than 10 milliliters per site. Do not administer within 21 days of slaughter. This drug product is not approved for use in female dairy cattle 20 months of age or older, including dry dairy cows. Use in these cattle may cause drug residues in milk and/or in calves born to these cows. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.

* * * * *

(3) * * *

(i) *Amount.* Administer 3 to 5 milligrams per pound of body weight by intramuscular injection at 12- to 24-hour intervals. Use 50 milligram per milliliter solution only.

* * * * *

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 137. In § 522.2662, revise paragraph (d)(2)(iii) to read as follows:

§ 522.2662 Xylazine.

* * * * *

(d) * * *

(2) * * *

(iii) *Limitations.* Do not use in horses intended for human consumption.

* * * * *

■ 138. In § 522.2670, revise the section heading and paragraph (a) to read as follows:

§ 522.2670 Yohimbine.

(a) *Specifications.* Each milliliter of solution contains either 2 or 5 milligrams of yohimbine (as hydrochloride).

* * * * *

Dated: March 13, 2014.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 2014–06131 Filed 3–24–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2014–0072]

Special Local Regulations; Recurring Marine Events in the Seventh Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the FKCC Swim around Key West Special Local Regulation in the Atlantic Ocean and Gulf of Mexico, from 8:30 a.m. until 4:30 p.m. on June 14, 2014. This action is necessary to ensure the safety of race participants, participant vessels, spectators, and the general public from the hazards associated with this event. During the enforcement period, no person or vessel may enter the regulated area without permission from the Captain of the Port.

DATES: The regulations in 33 CFR 100.701 Table 1 will be enforced from 8:30 a.m. until 4:30 p.m. on June 14, 2014.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Marine Science Technician First Class Ian G. Bowes, Sector Key West Prevention Department, U.S. Coast Guard; telephone 305–292–8823, email *Ian.G.Bowes@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the FKCC Swim around Key West Special Local Regulation in the Atlantic Ocean and Gulf of Mexico in 33 CFR 100.701 on June 14, 2014. These regulations can be found in the Code of Federal Regulations at 33 CFR 100.701.

On June 14, 2014, Florida Keys Community College is hosting the FKCC Swim around Key West, a swim event that will circumnavigate the island of Key West starting and finishing at Smathers Beach. The event will be held on the waters of the Atlantic Ocean and Gulf of Mexico in Key West. Approximately 175 swimmers with assist boats and kayaks will participate in the swim.

The special local regulations encompass certain waters of the Atlantic Ocean and Gulf of Mexico located around the island of Key West. The special local regulations will be enforced from 8:30 a.m. until 4:30 p.m. on June 14, 2014. The special local regulations area will consist of the following area: A moving race area, where all persons and vessels, except those persons and vessels participating in the swim event, are prohibited from entering, transiting, anchoring, or remaining. The race area is defined as all waters of the Atlantic Ocean and Gulf of Mexico located approximately 50 yards offshore of the island of Key West and extends 50 yards in front of the lead safety vessel proceeding the first race participants; extends 50 yards behind the safety vessel trailing the last race participants; and at all times 100 yards on either side of the race participants and safety vessels. Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the race area by contacting the Captain of the Port Key West by telephone at 305–292–8727, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the race area is granted by the Captain of the Port Key West, or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Key West or the designated representative. The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 100.701 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via a Broadcast Notice to Mariners.

Dated: March 7, 2014.

A.S. Young, Sr.,

Captain, U.S. Coast Guard, Captain of the Port Key West.

[FR Doc. 2014–06445 Filed 3–24–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0168]

Drawbridge Operation Regulation; Pearl River, LA/MS

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the operation of the US 90 highway bridge (East Pearl River Bridge), a swing span bridge across the Pearl River, mile 8.8, near Pearlington, Mississippi. The deviation is necessary in order to conduct electrical and structural repairs to the bridge. These repairs are essential for the continued safe operation of the bridge. This deviation allows the bridge to remain temporarily closed to navigation for ten hours on three separate dates to effect the repairs.

DATES: This deviation is effective from 7 a.m. on Monday, April 14, 2014 through 5 p.m. on Friday, April 25, 2014.

ADDRESSES: The docket for this deviation, [USCG–2014–0168] is available at *http://www.regulations.gov*. Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. 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 temporary deviation, call or email David Frank, Bridge Administration Branch, Coast Guard; telephone 504–671–2128, email *David.M.Frank@uscg.mil*. If you have questions on viewing the docket, call Cheryl F. Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Boh Bros. Construction Company, on behalf of the Louisiana Department of Transportation and Development, requested a temporary deviation from the operating schedule on the US 90 highway bridge (East Pearl River Bridge), a swing span bridge across the Pearl River, mile 8.8 between Slidell, St. Tammany Parish, Louisiana and Pearlington, Hancock County, Mississippi.

The bridge has a vertical clearance of 10 feet above mean high water in the closed-to-navigation position and unlimited clearance in the open-to-navigation position. In accordance with 33 CFR 117.486(b), the draw of the US 90 highway bridge shall open on signal; except that, from 7 p.m. to 7 a.m. the draw shall open on signal if at least four hours notice is given.

This temporary deviation allows the swing span bridge to remain closed to navigation from 7 a.m. until 5 p.m. on Monday, April 14, 2014, on Thursday, April 24, 2014, and on Friday, April 25, 2014. During the first closure, the contractor will jack up the swing span to conduct structural repairs. During the second and third closures, the contractor will conduct electrical repairs and/or replacement of parts.

Navigation at the site of the bridge consists mainly of small tows with barges, some commercial sightseeing boats, and some recreational pleasure craft. Due to prior experience, as well as coordination with waterway users, it has been determined that this closure will not have a significant effect on these vessels. No alternate routes are available.

In accordance with 33 CFR 117.35, the bridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 11, 2014.

David M. Frank,

Bridge Administrator.

[FR Doc. 2014–06443 Filed 3–24–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0228]

RIN 1625–AA00

Safety Zone, Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, and Calumet-Saganashkee Channel, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel on all waters of the Chicago Sanitary and Ship Canal from Mile Marker 296.1 to Mile Marker 296.7 at specified times from March 21 to March 30, 2014. This action is necessary to protect the waterway, waterway users, and vessels from the hazards associated with the U.S. Army Corps of Engineers' Fish Suppression and Dispersal Barriers testing operations.

During any of the enforcement periods listed below, entry into, transiting, mooring, laying-up or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port, Lake Michigan, or his designated representative.

DATES: The regulations in 33 CFR 165.930 will be enforced from 7 a.m. to 11 a.m. and from 1 p.m. to 5 p.m. on March 21, 2014, and during those hours each day from March 24 to March 30, 2014.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email MST1 Joseph McCollum, Prevention Department, Coast Guard Sector Lake Michigan, telephone 414–747–7148, email address *joseph.p.mccollum@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel, Chicago, IL, listed in 33 CFR 165.930. Specifically, the Coast Guard will enforce this safety zone between Mile Marker 296.1 to Mile Marker 296.7 on all waters of the Chicago Sanitary and Ship Canal. Enforcement will occur from 7 a.m. to 11 a.m. and from 1 p.m. to 5 p.m. on March 21, 2014, and during those hours each day from March 24 to March 30, 2014. This enforcement action is necessary because the Captain of the Port, Lake Michigan, has determined that the U.S. Army Corps of Engineers' Fish Suppression and Dispersal Barriers testing operations pose risks to life and property. Because of these risks, it is necessary to control vessel movement during the operations to prevent injury and property loss.

In accordance with the general regulations in § 165.23 of this part, entry into, transiting, mooring, laying up, or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port, Lake Michigan, or his or her designated representative.

Vessels that wish to transit through the safety zone may request permission from the Captain of the Port, Lake Michigan. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. Approvals will be granted on a case by case basis. The Captain of the Port may be contacted via U.S. Coast Guard Sector Lake Michigan on VHF channel 16.

This notice is issued under authority of 33 CFR 165.930 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Captain of the Port, Lake Michigan, will also provide notice through other means, which may include, but are not limited to, Broadcast Notice to Mariners, Local Notice to Mariners, local news media, distribution in leaflet form, and on-scene oral notice. Additionally, the Captain of the Port, Lake Michigan, may notify representatives from the maritime industry through telephonic and email notifications.

Dated: March 4, 2014.

M.W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.

[FR Doc. 2014–06447 Filed 3–24–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AN98

Payment for Home Health Services and Hospice Care to Non-VA Providers; Delay of Effective Date

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; delay of effective date.

SUMMARY: The Department of Veterans Affairs (VA) published in the **Federal Register** on November 14, 2013 (78 FR 68364), a notification delaying the effective date of a final rule that amends the payment methodology for providers of home health services and hospice care. That notification changed the effective date from November 15, 2013, to April 1, 2014. We are now delaying until June 1, 2014, the effective date of the final rule at 78 FR 26250.

DATES: *Effective Date:* The effective date for the final rule published May 6, 2013, at 78 FR 26250, is delayed from April 1, 2014 to June 1, 2014.

FOR FURTHER INFORMATION CONTACT: Karyn Barrett, Director of Administration, Department of Veterans Affairs, Veterans Health Administration, 3773 Cherry Creek Drive North, East Tower, Ste. 485, Denver, CO 80209, (303) 331–7829. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This rulemaking makes the VA regulation governing payments for certain non-VA health care, 38 CFR 17.56, applicable to non-VA home health services and hospice care. Section 17.56 provides, among other things, that Centers for Medicare and Medicaid (CMS) fee schedule or prospective payment system amounts will be paid to certain non-VA providers, unless VA negotiates other payment amounts with such providers. See 38 CFR 17.56(a)(2)(i). This change in the billing methodology for non-VA home health and hospice care was put forth in a proposed rule. We received one comment to this change and responded to that comment in a final rule published in the **Federal Register** on May 6, 2013 (78 FR 26250). The original effective date of the final rule was stated as November 15, 2013; however, we now delay the effective date of the final rule at 78 FR 26250 to the new effective date of June 1, 2014. The delay of the effective date is necessary to accommodate difficulties in the outreach and implementation of standardized processes for VA staff involved in the process of approving and paying for home health services and hospice care. Technology issues continue to be addressed in order to apply the billing methodology under § 17.56 to non-VA home health services and hospice care. These difficulties relate to separate administration of hospice care and home health services by the Veterans Health Administration's Office of Geriatrics and Extended Care, which uses separate methods for forming agreements with non-VA providers for the provision of these services, and difficulties regarding information technology systems necessary to use the CMS rate made applicable under § 17.56.

Dated: March 19, 2014.

Robert C. McFetridge,

Director, Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2014–06470 Filed 3–24–14; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2013–0002: FRL–9908–38–Region–10]

Revision to the Idaho State Implementation Plan; Approval of Fine Particulate Matter Control Measures; Franklin County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On December 14, 2012, the Idaho Department of Environmental Quality (IDEQ) submitted a revision to the State Implementation Plan (SIP) to address Clean Air Act (CAA) requirements for the Idaho portion (hereafter referred to as ''Franklin County'') of the cross border Logan, Utah-Idaho fine particulate matter ($PM_{2.5}$) nonattainment area (Logan UT–ID). The EPA is finalizing a limited approval of $PM_{2.5}$ control measures contained in the December 2012 submittal because incorporation of these measures strengthen the Idaho SIP and reduce sources of $PM_{2.5}$ emissions in Franklin County that contribute to violations of the 2006 $PM_{2.5}$ standard in the Logan UT–ID nonattainment area. We will address the remainder of the December 2012 SIP submission revision in a separate action.

DATES: This final rule is effective on April 24, 2014.

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA–R10–OAR–2013–0002. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at EPA Region 10, Office of Air, Waste, and Toxics, AWT–107, 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt at (206) 553–0256, *hunt.jeff@epa.gov*, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to the EPA.

Table of Contents

I. Background
II. Final Action
III. Statutory and Executive Order Reviews

I. Background

An explanation of the CAA requirements, a detailed explanation of the revision, and the EPA's reasons for the limited approval of the SIP submission were provided in the notice of proposed rulemaking published on December 26, 2013, and will not be restated here (78 FR 78315). The public comment period for this proposed rule ended on January 27, 2014. The EPA did not receive any comments on the proposal.

II. Final Action

The EPA is approving and incorporating into the SIP the $PM_{2.5}$ control measures submitted by IDEQ on December 14, 2012, except for certain provisions related to penalties. Provisions describing state or local enforcement authority are not incorporated into the SIP to avoid potential conflict with the EPA's independent authorities. The specific penalty provisions excluded from the EPA's incorporation by reference are listed in the docket for this action and in the table located in 40 CFR 52.670(c).

As described in the proposed rulemaking for this action, the EPA is not making a determination that these control measures satisfy Reasonably Available Control Measures (RACM) or any other statutory nonattainment area planning requirements under CAA title I, part D, subpart 4. However, the control measures adopted by IDEQ in the Franklin County portion of the Logan UT–ID nonattainment area provide important $PM_{2.5}$ reductions that strengthen the existing Idaho SIP. Due to the cross-state nature of the Logan UT–ID nonattainment area, the EPA will act on the remainder of Idaho's December 2012 SIP submission in a separate action, following a complete review of the corresponding Utah SIP submission.

III. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and the EPA notes that it will not 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. The 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 May 27, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: March, 10, 2014.

Dennis J. McLerran,

Regional Administrator, Region 10.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart N—Idaho

■ 2. Section 52.670 is amended:

■ a. In paragraph (c) in the table entitled ''EPA-APPROVED IDAHO REGULATIONS AND STATUTES'' by adding seven new entries at the end of the section entitled ''City and County Ordinances.''

■ b. In paragraph (e) in the table entitled ''EPA-APPROVED IDAHO NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES'' by adding two new entries at the end of the table.

The revisions read as follows:

§ 52.670 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED IDAHO REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanations
*	*	*	*	*
City and County Ordinances				
*	*	*	*	*
City of Clifton Ordinance No. 120.	Ordinance No. 120	08/11/12	3/25/14 [Insert page number where the document begins].	Except Section 9 (Penalty).
City of Dayton Ordinance #287.	Ordinance #287	08/08/12	3/25/14 [Insert page number where the document begins].	Except Section 9 (Penalty).
Franklin City Ordinance No. 2012–9–12.	Solid Fuel Heating Appliances	09/12/12	3/25/14 [Insert page number where the document begins].	Except Section 9 (Penalty).
Franklin County Ordinance No. 2012–6–25.	Solid Fuel Heating Appliances	06/25/12	3/25/14 [Insert page number where the document begins].	Except Section 9 (Penalty).
City of Oxford Memorandum of Understanding.	Solid Fuel Heating Appliances	10/22/12	3/25/14 [Insert page number where the document begins].	Except #2 of the MOA and Section 9 of Exhibit A.
City of Preston Ordinance No. 2012–1.	Ordinance No. 2012–1	06/11/12	3/25/14 [Insert page number where the document begins].	Except Section 9 (Penalty).
City of Weston Ordinance No. 2012–01.	Ordinance No. 2012–01	08/01/12	3/25/14 [Insert page number where the document begins].	Except Section 9 (Penalty).
*	*	*	*	*

* * * * * (e) * * *

EPA-APPROVED IDAHO NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Comments
*	*	*	*	*
Letter of Intent PM 2.5 Reduction, Franklin County Road Department to Department of Environmental Quality (Voluntary Measure).	Franklin County, Logan UT–ID $PM_{2.5}$ Nonattainment Area.	12/19/12	3/25/14 [Insert page number where the document begins].	Fine Particulate Matter Control Measures; Franklin County.
Road Sanding Agreement, Idaho Transportation Department to Idaho Department of Environmental Quality (Voluntary Measure).	Franklin County, Logan UT–ID $PM_{2.5}$ Nonattainment Area.	12/19/12	3/25/14 [Insert page number where the document begins].	Fine Particulate Matter Control Measures; Franklin County.

[FR Doc. 2014–06352 Filed 3–24–14; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R01–OAR–2012–0707; A–1–FRL–9908–37–Region 1]

Approval and Promulgation of State Plans (Negative Declarations) for Designated Facilities and Pollutants: Connecticut, Maine, New Hampshire, and Vermont; Withdrawal of State Plan for Designated Facilities and Pollutants: New Hampshire; Technical Corrections to Approved State Plans (Negative Declarations): Rhode Island and Vermont

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving negative declarations for hospital/medical/infectious waste incinerators (HMIWI) for the State of Connecticut and the State of New Hampshire and negative declarations for sewage sludge incinerators (SSI) for the State of Maine and the State of Vermont. EPA is also approving the withdrawal of a previously-approved State Plan for HMIWI in the State of New Hampshire. Lastly, EPA is making technical corrections to Clean Air Act Sections 111(d) and 129 State Plan (Negative Declaration) approvals for Other Solid Waste Incinerators (OSWI) for the State of Rhode Island and the State of Vermont.

DATES: This direct final rule will be effective May 27, 2014, unless EPA receives adverse comments by April 24, 2014. 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 Number EPA–R01–OAR–2012–0707 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. Email: *mcdonnell.ida@epa.gov.*
3. Fax: (617) 918–0653.
4. Mail: ''Docket Identification Number EPA–R01–OAR–2012–0707'', Ida E. McDonnell, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, & Indoor Programs Unit, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912.
5. Hand Delivery or Courier. Deliver your comments to: Ida E. McDonnell, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, & Indoor Programs Unit, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R01–OAR–2012–0707. 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 through *www.regulations.gov,* or email, information that you consider to be CBI or otherwise protected. 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 electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the state submittal and EPA's technical support document are also available for public inspection during normal business

hours, by appointment at the Bureau of Air Management, Department of Energy and Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630; Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333–0017; Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095; Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, RI 02908–5767; Vermont Department of Environmental Conservation, Air Pollution Control Division, One National Life Drive, Davis (North) Building 2nd Floor, Montpelier, VT 05620–3802).

FOR FURTHER INFORMATION CONTACT: Patrick Bird, Air Permits, Toxics, & Indoor Programs Unit, Air Programs Branch, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Mail Code: OEP05–2, Boston, MA 02109–0287. The telephone number is (617) 918–1287. Mr. Bird can also be reached via electronic mail at *bird.patrick@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. Background
II. Hospital/Medical/Infectious Waste Incinerators
A. Connecticut
B. New Hampshire
III. Sewage Sludge Incinerators
A. Maine
B. Vermont
IV. Other Solid Waste Incinerators
A. Rhode Island
B. Vermont
V. Final Actions
VI. Statutory and Executive Order Reviews

I. Background

Sections 111(d) and 129 of the Clean Air Act (the Act) require submittal of state plans to control certain pollutants (designated pollutants) at existing solid waste combustion facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same source category and EPA has established emission guidelines for such existing sources. If a state fails to submit a satisfactory plan, the Act provides EPA the authority to prescribe a plan for regulating designated pollutants at designated facilities. The EPA-prescribed plan, also known as a federal plan, is generally delegated to states with designated facilities but no EPA-approved state-specific plan. If no such designated facilities exist within a state's jurisdiction, a state may submit a negative declaration in lieu of a state plan.

II. Hospital/Medical/Infectious Waste Incinerators

New source performance standards (NSPS) for new stationary source hospital/medical/infectious waste incinerators (HMIWI) and emission guidelines (EG) for existing source HMIWI were originally promulgated on September 15, 1997 (62 FR 48348). The rule underwent a number of revisions and amendments throughout the 2000s and was most recently finalized on April 4, 2011 (76 FR 18407). EG for existing HMIWI are applicable to units for which construction commenced on or before December 1, 2008 or for which modification or reconstruction commenced no later than April 6, 2010. EG for existing HMIWI are codified at 40 CFR Part 60, Subpart Ce.

A. Connecticut

EPA inventoried one existing HMIWI in the State of Connecticut; however the unit, owned by Bristol-Myers Squibb Company and located at their Wallingford, CT facility, was rendered inoperable in early September 2012. An inspection conducted on September 24, 2012 by the Connecticut Department of Energy & Environmental Protection (CT DEEP) confirmed the HMIWI was rendered inoperable, and therefore no longer subject to HMIWI EG.

CT DEEP intended to request delegation of the HMIWI federal plan. With the closure of its only existing HMIWI unit, CT DEEP submitted a negative declaration on January 25, 2013 indicating no existing HMIWI operate within the State of Connecticut.

B. New Hampshire

On August 8, 2011, the New Hampshire Department of Environmental Services (NH DES) submitted a negative declaration certifying no existing HMIWI operate within the State of New Hampshire. EPA published approval of a New Hampshire State Plan for existing HMIWI on February 8, 2000 (65 FR 6008), and the August 2011 negative declaration could not be approved until the State Plan was withdrawn by the State. On September 9, 2011, NH DES formally requested EPA to withdraw the State Plan for existing HIMWI, citing the closure of all HMIWI units in the State. EPA requested documentation of the closure of certain HMIWI that operated into the late 2000s. NH DES complied with this request, and on October 9, 2012, submitted an updated negative declaration. The October 2012 negative declaration included supporting documents which demonstrated the units in question were permanently shut down and rendered inoperable. Furthermore, NH DES submitted documents citing RSA 125–N–6, a state regulation enacted by the General Court of New Hampshire which prohibits the reactivation of closed HMIWIs or the construction of new HMIWIs.

III. Sewage Sludge Incinerators

NSPS for sewage sludge incinerators (SSI) for which construction commenced after October 14, 2010 or modification or reconstruction commenced after September 21, 2011 and EGs for existing SSI constructed on or before October 14, 2010 were promulgated by EPA on March 21, 2011 (76 FR 15372). The EG for existing SSI are codified at 40 CFR Part 60, Subpart MMMM.

A. Maine

Maine Department of Environmental Protection (ME DEP) submitted a negative declaration on July 20, 2012 certifying no existing SSI operate within the State of Maine. ME DEP air and water licensing staff confirmed the absence of existing SSI within the State's jurisdiction prior to its submittal of the negative declaration.

B. Vermont

Vermont Department of Environmental Conservation submitted a negative declaration on February 10, 2012 certifying no existing SSI operate within the State of Vermont.

IV. Other Solid Waste Incinerators

NSPS for other solid waste incinerators (OSWI) for which construction commenced after December 9, 2004 or modifications or reconstruction commenced on or after June 16, 2006 and EGs for existing OSWI constructed on or before December 9, 2004 were promulgated by EPA on December 16, 2005 (70 FR 74870). The EG for existing OSWI are codified at 40 CFR Part 60, Subpart FFFF.

EPA became aware of two clerical errors inadvertently codified under 40 CFR Part 62, Subpart OO (Rhode Island) and UU (Vermont). The following paragraphs explain the errors in greater detail and discuss the corrective actions EPA is making in today's **Federal Register**.

A. Rhode Island

On April 6, 2007, EPA approved a negative declaration in lieu of a state plan for existing OSWI in the State of Rhode Island (72 FR 17027). The approved regulatory text at 40 CFR 62.9995 incorrectly states:

''On November 8, 2006, the Rhode Island Department of Environmental Management submitted a letter certifying that there are no existing other solid waste incineration units in the state subject to the emission guidelines under part 60, subpart EEEE of this chapter.''

40 CFR Part 60, Subpart EEEE refers to NSPS affecting new or modified OSWI. 40 CFR 62.9995 must be amended by removing reference to Subpart EEEE and adding reference to EG applicable to existing OSWI codified at 40 CFR Part 60, Subpart FFFF.

B. Vermont

On September 13, 2006, EPA approved a negative declaration in lieu of a state plan for existing OSWI in the State of Vermont (71 FR 53972). The approved regulatory text at 40 CFR 62.11490 incorrectly states:

''On June 30, 2006, the Vermont Department of Environmental Conservation submitted a letter certifying that there are no existing other solid waste incineration units in the state subject to the emission guidelines under part 60, subpart EEEE of this chapter.''

40 CFR Part 60, Subpart EEEE refers to NSPS affecting new or modified OSWI. 40 CFR 62.11490 must be amended by removing reference to Subpart EEEE and adding reference to EG applicable to existing OSWI codified at 40 CFR Part 60, Subpart FFFF.

V. Final Actions

EPA is approving the negative declarations for HMIWI for the State of Connecticut and the State of New Hampshire and negative declarations for SSI for the State of Maine and the State of Vermont. The negative declarations satisfy the requirements of 40 CFR 62.06 and will serve in lieu of CAA section 111(d)/129 state plans for the specified states and source categories.

EPA is approving the NH DES request for withdrawal of the New Hampshire HMIWI State Plan. NH DES has successfully demonstrated that no existing HMIWI operate within the State. The negative declaration submitted by NH DES for existing HMIWI (also being approved in today's action) will serve in lieu of a state plan.

Lastly, EPA is approving technical corrections to 40 CFR Part 62, Subpart OO (Rhode Island) and UU (Vermont). This action corrects clerical errors made during the approval of OSWI State Plans (Negative Declarations) for the State of Rhode Island and the State of Vermont.

EPA is publishing these actions without prior proposal because the Agency views these as noncontroversial amendments and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the negative declarations, State Plan withdrawal, and technical corrections should relevant adverse comments be filed. This rule will be effective May 27, 2014 without further notice unless the Agency receives relevant adverse comments by April 24, 2014.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 27, 2014 and no further action will be taken on the proposed rule. 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.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a 111(d)/129 plan submission that complies with the provisions of the CAA and applicable Federal regulations. 40 CFR 62.04. Thus, in reviewing 111(d)/129 plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because this direct final rulemaking is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 May 27, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. 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, so that EPA can withdraw 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 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 27, 2014.

H. Curtis Spalding,

Regional Administrator, EPA New England.

40 CFR part 62 is amended as follows:

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart H—Connecticut

■ 2. Add § 62.1725 and an undesignated heading to subpart H to read as follows:

Air Emissions From Existing Hospital/Medical/Infectious Waste Incineration Units

§ 62.1725 Identification of plan—negative declaration

On January 25, 2013, the State of Connecticut Department of Energy and Environmental Protection submitted a letter certifying no Hospital/Medical/Infectious Waste Incineration units subject to 40 CFR part 60, subpart Ce operate within its jurisdiction.

Subpart U—Maine

■ 3. Add § 62.4990 and a new undesignated center heading to subpart U to read as follows:

Air Emissions From Existing Sewage Sludge Incineration Units

§ 62.4990 Identification of plan—negative declaration.

On July 20, 2012, the State of Maine Department of Environmental Protection submitted a letter certifying no Sewage Sludge Incineration units subject to 40 CFR part 60, subpart MMMM operate within its jurisdiction.

Subpart EE—New Hampshire

§ 62.7325 [Amended]

■ 4. Amend § 62.7325 by removing and reserving paragraphs (b)(2) and (c)(2).

■ 5. Revise § 62.7450 to read as follows:

§ 62.7450 Identification of plan—negative declaration.

On August 2, 2011, September 9, 2011, and October 9, 2012 the State of New Hampshire Department of Environmental Services submitted letters certifying no Hospital/Medical/Infectious Waste Incineration units subject to 40 CFR part 60, subpart Ce operate within its jurisdiction.

Subpart OO—Rhode Island

■ 6. Revise § 62.9995 to read as follows:

§ 62.9995 Identification of plan—negative declaration.

On November 8, 2006, The State of Rhode Island Department of Environmental Management submitted a letter certifying no Other Solid Waste Incineration units subject to 40 CFR part 60, subpart FFFF operate within its jurisdiction.

Subpart UU—Vermont

■ 7. Revise § 62.11490 to read as follows:

§ 62.11490 Identification of plan—negative declaration.

On June 30, 2006, the State of Vermont Department of Environmental Conservation submitted a letter certifying no Other Solid Waste Incineration units subject to 40 CFR part 60, subpart FFFF operate within its jurisdiction.

■ 8. Add § 62.11495 and an undesignated center heading to subpart UU to read as follows:

Air Emissions From Existing Sewage Sludge Incinerators

§ 62.11495 Identification of plan—negative declaration.

On February 10, 2012, the State of Vermont Department of Environmental Conservation submitted a letter certifying no Sewage Sludge Incineration units subject to 40 CFR part 60, subpart MMMM operate within its jurisdiction.

[FR Doc. 2014–06375 Filed 3–24–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 12

[Docket ID: FEMA–2014–0011]

RIN 1660–AA82

Removal of Federal Advisory Committee Act Regulations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects the RIN that published in the **Federal Register** on March 13, 2014. This final rule removes the regulations that implement the Federal Advisory Committee Act (FACA) for the Federal Emergency Management Agency (FEMA). FEMA's implementation of FACA is now governed by the rules promulgated by the General Services Administration (GSA) and by the policies issued by the Department of Homeland Security (DHS).

DATES: *Effective Date:* April 14, 2014.

FOR FURTHER INFORMATION CONTACT: *Program Information:* Demaris Belanger, Group Federal Officer (GFO), Office of the Chief Administrative Officer, Mission Support Bureau, Federal Emergency Management Agency, Room 706–A, 500 C Street SW., Washington DC, 20472–3000, phone: 202–212–2182, email: *demaris.belanger@dhs.gov.*

Legal Information: Michael Delman, Attorney Advisor, Office of Chief Counsel, Federal Emergency Management Agency, 8NE, 500 C Street SW., Washington, DC, 20472–3100, phone: 202–646–2447, email: *michael.delman@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: In the final rule, (79 FR 14180), beginning on page 14180 in the **Federal Register** issue of March 13, 2014, make the following correction: on page 14180 in the 2nd column in the RIN section, replace the RIN to read ''RIN 1660–AA82.''

Dated: March 19, 2014.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–06529 Filed 3–24–14; 8:45 am]

BILLING CODE 9111–19–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 7

[Docket No. DOT–OST–2010–0297]

RIN 2105–AD99

Public Availability of Information; Freedom of Information Act

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The U.S. Department of Transportation (DOT) is revising its regulations implementing the Freedom of Information Act (FOIA) following a period of public comment on its proposed rule. The purposes for the revision are to update the regulations to be consistent with amendments to FOIA that were signed into law on December 31, 2007, and October 28, 2009, to revise DOT's fee schedule and other charges, and to make provisions clearer and easier to locate.

DATES: This rule is effective May 27, 2014.

ADDRESSES: Comments submitted to the docket for this rulemaking are available at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, or electronically at *http://www.regulations.gov.* Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual who submitted the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review the U.S. Department of Transportation's (DOT) complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78).

FOR FURTHER INFORMATION CONTACT: John Allread, Attorney-Advisor, Office of the General Counsel, Department of Transportation, Washington, DC, at *john.allread@dot.gov* or (202) 366–1497; or Claire McKenna, Attorney-Advisor, Office of the General Counsel, Department of Transportation, Washington, DC, at *claire.mckenna@dot.gov* or (202) 366–0365; or Kathy Ray, Departmental FOIA Officer, Office of the General Counsel, Department of Transportation, Washington, DC, at *kathy.ray@dot.gov* or (202) 366–4542.

SUPPLEMENTARY INFORMATION: These regulations implementing FOIA, 5 U.S.C. 552, were published for public comment in the **Federal Register** December 27, 2010 (75 FR 81191), the comment period ended on February 25, 2011, and two commenters provided input. One commenter addressed language in proposed 49 CFR 7.26(b) that the commenter said is inconsistent with the FOIA, court precedent, and U.S. Department of Justice (DOJ) guidance. We adopt this comment, as follows:

As originally proposed by DOT, § 7.26(b) would have included a clause stating that DOT makes a reasonable effort to search electronic records in the manner in which they are designed to be searched (i.e., without reprogramming).

The commenter objects to this clause, which does not appear in DOT's current FOIA regulations, and could be taken as an attempt by DOT to limit the flexibility we must have to re-program electronic records to meet the needs of a FOIA requester. It was not our intention to limit our required flexibility in this area, or to vary from DOJ guidance or court precedent. The commenter requests that the clause be deleted and we agree.

We also received comments from the National Archives and Records Administration's Office of Government Information Services (OGIS). In general, OGIS supported DOT's proposed regulatory revisions, emphasizing our efforts to make them consistent with the OPEN Government Act of 2007 and the OPEN FOIA Act of 2009.

The OGIS recommended that DOT reconsider language in the proposed rule that appears to require that a request for records be explicitly marked as a ''FOIA Request'' in order to qualify as such. It was not our intention to require that requests be explicitly identified by the requester to qualify as a FOIA request; in fact, the language of the rule states that requests ''should'' be marked ''FOIA request,'' rather than stating that they ''shall'' be so marked. To eliminate any potential misunderstanding about this aspect of the rule, we have revised the section heading for § 7.24 from ''What must a FOIA request contain?'' to ''How do I submit a FOIA request?''. The OGIS also recommended that in cases where the requested information is publicly available, we so advise the requester and allow him/her access online or through other means. We agree and already process requests for publicly accessible information in a manner consistent with this recommendation by referring requesters to information available on the Internet or providing hard copies.

With regard to § 7.28, OGIS recommended that DOT components handle consultations and referrals received from other agencies or DOT components according to the date that the FOIA request was received by the first component or agency. We agree and added a new subsection (d) to § 7.28 to address this comment.

The OGIS recommended that DOT establish an individualized tracking number for all FOIA requests that will take longer than 10 days to process, inform requesters of the tracking number assigned to their request, and provide a mechanism for requesters to obtain information about the status of their requests. The DOT's existing FOIA processing procedures are consistent with these recommendations. We added a subsection (3)(b) to § 7.31 to publicize these procedures, as further suggested by OGIS.

The OGIS noted that § 7.32(d)(1) would mandate that FOIA appeals must be made within 30 calendar days from the date of the initial determination and suggested that this time period be extended to 45 or 60 days, as is the standard at many agencies. The OGIS further recommended that the referenced date should be the postmark date. We agree with these suggestions and have revised § 7.32(d)(1) to change the appeal period to 45 days, measured from the date that the initial determination is signed to the postmark date on the appeal letter.

The OGIS also recommended that DOT accept appeals by electronic mail. We agree and removed the language from § 7.32(d)(1) that prohibited submission of appeals by electronic mail.

The OGIS had several comments regarding DOT's procedures for FOIA appeals. Specifically, OGIS suggested that we direct requesters to work with DOT components' FOIA public liaisons to resolve disputes; to work with OGIS to resolve disputes between FOIA requesters and DOT as a non-exclusive alternative to litigation; and that DOT coordinate collaboratively with OGIS in OGIS's review of agencies' policy and procedures. The DOT not only appreciates OGIS' comments, but also the valuable service that OGIS provides to requesters and agencies. The DOT's existing FOIA processing procedures already comport with OGIS' recommendations, as documented in DOT's FOIA Reference Guide; therefore, we determined that further revisions to our regulations are unnecessary. With regard to ''Subpart E—Fees,'' OGIS recommended that DOT direct FOIA professionals to provide each requester with a breakdown of the total fee

estimate. The DOT agrees and already processes FOIA requests consistent with this recommendation; therefore, we determined that further revisions to our regulations are unnecessary to implement this recommendation.

In addition, we removed language in § 7.33(a)(2) that noted, parenthetically, that DOT could not extend the time limit for reply to an appeal based on unusual circumstances if DOT had extended the time limit for this reason in its initial response. Upon further review, we determined that this limitation is not explicitly required by FOIA's statutory language and that it would unduly restrict DOT's ability to extend timelines when needed because of unusual circumstances, as permitted under FOIA.

On January 17, 2014, President Obama signed into law the Consolidated Appropriations Act, 2014, Division L—Transportation, Housing and Urban Development and Related Agencies Appropriations Act, 2014, Public Law 113–76 (Jan. 17, 2014), which included language transferring the previous functions of the Research and Innovative Technology Administration (RITA) to the newly formed Office of the Assistant Secretary for Research and Technology within the Office of the Secretary. Thus, the Office of the Assistant Secretary for Research and Technology is now an office within the Office of the Secretary and, as a result, we have deleted the references to RITA in §§ 7.2 and 7.15.

Finally, we have made a few other minor (non-substantive) changes to grammar or to achieve consistency in punctuation.

Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

The DOT has considered the impact of this rulemaking action under Executive Orders 12866 and 13563 (January 18, 2011, ''Improving Regulation and Regulatory Review''), and the DOT's regulatory policies and procedures (44 FR 11034; February 26, 1979). The DOT has determined that this action does not constitute a significant regulatory action within the meaning of Executive Order 12866 and within the meaning of DOT regulatory policies and procedures. Further, the Office of Management and Budget has advised us that this rule is not significant. We expect that the economic impact of this rulemaking will be minimal. The rule does not increase the fees that DOT charges requesters for copies, and increases the threshold under which DOT will not charge fees from $10 to $20. In addition, although the rule alters the way that DOT charges search fees by splitting the previous search fees performed by GS–9 through GS–14 into two categories (one for GS–9 to GS–12 and a new category for GS–13 to GS–14), we do not expect that this will result in an aggregate increase in search costs to requesters. Lastly, DOT is increasing the charge associated with requests for certified copies from $4 to $10 based on the resources necessary to satisfy these requests. Requests for certified copies make up a very small percentage of DOT's total number of FOIA requests each year, and, therefore, we expect very few requesters to be impacted by this modest change. We believe that any increase in fees implemented in this rule will be off-set by reductions in fees also implemented in this rule, such as the increase in the threshold under which fees will not be charged from $10 to $20.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), DOT has evaluated the effects of these changes on small entities. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities because this rule merely clarifies and updates DOT's FOIA procedures in light of amendments to FOIA that were signed into law on December 31, 2007, and October 28, 2009, and will not result in an expenditure of funds by small entities.

National Environmental Policy Act

The agency has analyzed the environmental impacts of this proposed action pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. *Id.* Paragraph 3.c.5 of DOT Order 5610.1C incorporates by reference the categorical exclusions for all DOT Operating Administrations. This action is covered by the categorical exclusion listed in the Federal Highway Administration's implementing procedures, ''[p]romulgation of rules, regulations, and directives.'' 23 CFR 771.117(c)(20). The purpose of this rulemaking is to revise the agency's administrative process in implementing the Freedom of Information Act. The agency does not anticipate any environmental impacts and there are no extraordinary circumstances present in connection with this rulemaking.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined that it does not have sufficient implications for Federalism to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. The DOT has determined that this action does not contain a collection of information requirement for the purposes of the PRA.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, 109 Stat. 48, March 22, 1995), requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal Governments, and the private sector. The UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A ''Federal mandate'' is a new or additional enforceable duty, imposed on any State, local, or tribal Government, or the private sector. If any Federal mandate causes those entities to spend, in aggregate, $143.1 million or more in any one year (adjusted for inflation), an UMRA analysis is required. This rule would not impose Federal mandates on any State, local, or tribal Governments or the private sector.

List of Subjects in 49 CFR Part 7

Public availability of information.

Issued in Washington, DC, on March 12, 2014.

Kathryn B. Thomson,

Acting General Counsel.

■ In consideration of the foregoing, DOT amends Title 49, Code of Federal Regulations, chapter I, by revising part 7 to read as follows:

PART 7—PUBLIC AVAILABILITY OF INFORMATION

Subpart A—General Provisions

Sec.
7.1 General.
7.2 Definitions.

Subpart B—Information Required To Be Made Public by DOT

7.11 What records are published in the Federal Register, and how are they accessed?
7.12 What records are available in reading rooms, and how are they accessed?
7.13 How are copies of publicly available records obtained?
7.14 Redaction of Information That is Exempt from Disclosure.
7.15 Protection of Records.

Subpart C—Availability of Reasonably Described Records

Under the Freedom of Information Act

7.21 What does this subpart cover?
7.22 Who administers this subpart?
7.23 What limitations apply to disclosure?
7.24 How do I submit a FOIA request?
7.25 How does DOT handle first-party requests?
7.26 To what extent and in what format are records searched and made available?
7.27 What are the designated DOT FOIA Requester Service Centers?
7.28 How does DOT handle requests that concern more than one Government agency?
7.29 When and how does DOT consult with submitters of commercial information?

Subpart D—Time Limits

7.31 What time limits apply to DOT with respect to initial determinations?
7.32 What time limits apply to a requester when appealing DOT's initial or final determination?
7.33 What time limits apply to DOT with respect to administrative appeals (final determinations)?
7.34 When and how are time limits applicable to DOT extended?
7.35 When and how is the twenty day time limit for rendering an initial determination tolled?

Subpart E—Fees

7.41 When and how are processing fees imposed for records that are made available under subpart B or processed under subpart C of this part?
7.42 What is DOT's fee schedule for records requested under subpart C of this part?
7.43 When are fees waived or reduced for records requested under subpart C of this part?
7.44 How can I pay a processing fee for records requested under subpart B or subpart C of this part?
7.45 When are pre-payments required for records requested under subpart C of this part, and how are they handled?
7.46 How are late payments handled?

Authority: 5 U.S.C. 552; 31 U.S.C. 9701; 49 U.S.C. 322; E.O. 12600; E.O. 13392.

Subpart A—General Provisions

§ 7.1 General.

(a) This part implements the Freedom of Information Act, 5 U.S.C. 552, as amended, and prescribes rules governing the public availability of Department of Transportation (DOT) records.

(b) Subpart B of this part contains the DOT regulations concerning the public availability of:

(1) Records and indices that DOT is required to publish in the **Federal Register** pursuant to 5 U.S.C. 552(a)(1) (described in § 7.11(a)); and

(2) Records and indices that DOT is required to make available to the public in a reading room without need for a specific request, pursuant to 5 U.S.C. 552(a)(2) (described in § 7.12(a)).

(c) Subpart C of this Part contains the DOT regulations concerning records that may be requested from DOT under the FOIA, namely, records that DOT is not required to publish in the **Federal Register** or make publicly available in a reading room under 5 U.S.C. 552(a)(2)(A), (B), (C), and (E) and frequently requested records even if DOT has made them publicly available as required under 5 U.S.C. 552(a)(2)(D). Because DOT and its components make many of these records available on their Web pages (*http://www.dot.gov* or *http://www.dot.gov/foia*), requesters may find it preferable to obtain such records directly from the Web pages instead of submitting a FOIA request, if the Web pages contain records that meet their needs.

(d) Subpart D of this part contains the DOT regulations concerning time limits applicable to processing requests for records under subpart C.

(e) Subpart E of this part contains the DOT regulations concerning processing fees applicable to records made available under subpart B or requested under subpart C.

§ 7.2 Definitions.

Unless the context requires otherwise, the following definitions apply in this part:

Act and *FOIA* mean the Freedom of Information Act, 5 U.S.C. 552, as amended.

Administrator means the head of each Operating Administration.

Components—see the definition of Department in this section.

Concurrence means that the approval of the individual being consulted is required in order for the subject action to be taken.

Confidential commercial information means trade secrets and confidential, privileged, and/or proprietary business or financial information submitted to DOT by any person.

Consultation has its ordinary meaning; the approval of the individual being consulted is not required in order for the subject action to be taken.

Department or *DOT* means the Department of Transportation, including the Office of the Secretary, the Office of Inspector General, and all DOT Operating Administrations, any of which may be referred to as a DOT component. This definition specifically excludes the Surface Transportation Board, which has its own FOIA regulations at 49 CFR part 1001.

First-party request means a request by an individual for records pertaining to that individual.

Hourly rate means the actual hourly base pay for a civilian employee.

Operating Administration means one of the following components of the Department:

(1) Federal Aviation Administration;

(2) Federal Highway Administration;

(3) Federal Motor Carrier Safety Administration;

(4) Federal Railroad Administration;

(5) Federal Transit Administration;

(6) Maritime Administration;

(7) National Highway Traffic Safety Administration;

(8) Pipeline and Hazardous Materials Safety Administration; and

(9) Saint Lawrence Seaway Development Corporation.

Reading room records are those records required to be made available to the public without a specific request under 5 U.S.C. 552(a)(2), as described in § 7.12 of subpart B of this part. DOT makes reading room records available to the public electronically through its FOIA Web pages (*http://www.dot.gov/foia*) and at the physical locations identified in § 7.12(b). Other records may also be made available at DOT's discretion through DOT Web pages (*http://www.dot.gov*).

Record includes any writing, drawing, map, recording, diskette, DVD, CD–ROM, tape, film, photograph, or other documentary material, regardless of medium, by which information is preserved. The term also includes any such documentary material stored electronically by computer.

Redact means delete or mark over.

Representative of the news media means any person or entity that gathers

information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. ''News'' means information that is about current events or that would be of current interest to the public.

Responsible DOT official means the head of the DOT Operating Administration concerned, or the General Counsel or the Inspector General, as the case may be, or the designee of any of them authorized to take an action under this Part.

Secretary means the Secretary of Transportation or any individual to whom the Secretary has delegated authority in the matter concerned.

Toll means temporarily stop the running of a time limit.

Subpart B—Information Required To Be Made Public by DOT

§ 7.11 What records are published in the Federal Register, and how are they accessed?

(a) *General.* Pursuant to 5 U.S.C. 552(a)(1), DOT publishes the following records in the **Federal Register** and makes an index of the records publicly available. For purposes of this paragraph, material that is reasonably available to the class of persons affected by the material is considered to be published in the **Federal Register** when the material is incorporated by reference with the approval of the Director of the Federal Register.

(1) Descriptions of DOT's organization and the established places at which, the officers from whom, and the methods by which, the public may secure information and make submittals or obtain decisions;

(2) Statements of the general course and methods by which DOT's functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law and statements of general policy or interpretations of general applicability formulated and adopted by DOT; and

(5) Each amendment, revision, or repeal of any material listed in paragraphs (a)(1) through (4) of this section.

(b) *Federal Register locations.* DOT makes its **Federal Register** publications and indices publicly available at the physical locations identified in § 7.12(b). The publications and indices can be accessed online at *http://www.federalregister.gov.*

§ 7.12 What records are available in reading rooms, and how are they accessed?

(a) *General.* Pursuant to 5 U.S.C. 552(a)(2), unless the following records are promptly published and offered for sale or published in the **Federal Register**, DOT and its components make the following records, and an index to the records, available in a reading room, including an electronic reading room if the records were created by DOT on or after November 1, 1996:

(1) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(2) Statements of policy and interpretations that have been adopted by DOT and are not published in the **Federal Register**;

(3) Administrative staff manuals and instructions to staff that affect a member of the public; and

(4) Copies of all records, regardless of form or format, that have been released to any person under subpart C of this Part and that, because of the nature of their subject matter, DOT determines have become or are likely to become the subject of subsequent requests for substantially the same records.

(5) A general index of the records listed in paragraph (a)(4) of this section.

(b) *Reading room locations.* DOT makes its reading room records and indices (in the form of lists or links) available at *http://www.dot.gov/foia* and at the following physical locations:

(1) DOT Dockets Office, 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590: hours of operation: 9 a.m. to 5 p.m. ET, Monday through Friday except Federal holidays; telephone: (202) 366–9322, (202) 366–9826, or (800) 647–5527. DOT provides a computer terminal and printer at this location for accessing electronic reading room records.

(2) National Highway Traffic Safety Administration (NHTSA) Technical Information Services public record unit: 1200 New Jersey Avenue SE., Room W12–300, Washington, DC 20590; hours of operation: 9:30 a.m. to 5 p.m. ET, Monday through Friday except Federal holidays; telephone (202) 366–2588. NHTSA provides a computer terminal and printer at this location for accessing electronic reading room records.

(3) Other public record units maintained by DOT components (e.g., at regional offices): Information concerning the availability of a computer terminal and printer at such units, and the location and hours of operation of such units, can be obtained through the DOT Dockets Office at (202) 366–9322, (202) 366–9826, or (800) 647–5527.

§ 7.13 How are copies of publicly available records obtained?

(a) *Copies of materials covered by this subpart that are published and offered for sale.* Records that are ordinarily made available to the public as a part of an information program of the Government, such as news releases and pamphlets, may be obtained upon request by contacting the appropriate DOT location identified in § 7.12(b) or the sources identified in § 7.41(g), and paying the applicable duplication fee or purchase price. Whenever practicable, DOT also makes the publications available at the appropriate physical locations identified in § 7.12(b).

(b) *Copies of materials covered by this subpart that are not published and offered for sale.* Such records may be ordered, upon payment of the appropriate fee (if any fee applies), through the applicable FOIA Requester Service Center or through the DOT Dockets Office identified in § 7.12(b):

(1) Per copy of each page (not larger than 8.5 x 14 inches) reproduced by photocopy or similar means—US $0.10.

(2) Per copy prepared by any other method of duplication—actual direct cost of production.

(3) Copies are certified upon request by contacting the applicable FOIA Requester Service Center listed in § 7.27 and paying the fee prescribed in § 7.41(e).

§ 7.14 Redaction of information that is exempt from disclosure.

Whenever DOT determines it to be necessary to prevent the disclosure of information required or authorized to be withheld by FOIA or another Federal statute (such as, to prevent a clearly unwarranted invasion of personal privacy), DOT redacts such information from any record covered by this subpart that is published or made available. A full explanation of the justification for the deletion accompanies the record published or made available.

§ 7.15 Protection of records.

Records made available to the public under this subpart may not be removed, altered, destroyed, or mutilated (this excludes duplicate copies that are provided to a member of the public to take and keep). 18 U.S.C. 641 provides for criminal penalties for embezzlement or theft of Government records. 18 U.S.C. 2071 provides for criminal

penalties for the willful and unlawful concealment, mutilation or destruction of, or the attempt to conceal, mutilate, or destroy, Government records.

Subpart C—Availability of Reasonably Described Records Under the Freedom of Information Act

§ 7.21 What does this subpart cover?

(a) Except as otherwise provided in paragraph (b) of this section, this subpart applies to reasonably described records that are made available in response to written requests under FOIA.

(b) This subpart does not apply to:

(1) Records published in the **Federal Register**.

(2) Records published and offered for sale.

(3) Records (other than frequently requested records) made available in a reading room.

(4) Records or information compiled for law enforcement purposes and covered by the disclosure exemption described in § 7.23(c)(7)(A) if—

(i) The investigation or proceeding involves a possible violation of criminal law; and

(ii) There is reason to believe that—

(A) The subject of the investigation or proceeding is not aware of its pendency; and

(B) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings.

(5) Informant records maintained by any criminal law enforcement component of DOT under an informant's name or personal identifier, if requested by a third party according to the informant's name or personal identifier, unless the informant's status as an informant has been officially confirmed.

§ 7.22 Who administers this subpart?

(a) A Chief FOIA Officer is appointed by the Secretary to oversee DOT's compliance with the Act pursuant to 5 U.S.C. 552(k). The DOT Chief FOIA Officer is designated at 49 CFR 1.27a as the Career Deputy General Counsel.

(b) Each DOT FOIA Requester Service Center listed in § 7.27 is the initial point of contact for providing information about its processing of requests.

(c) One or more Public Liaisons are designated by the Chief FOIA Officer for each DOT FOIA Requester Service Center listed in § 7.27. Public Liaisons assist requesters in reducing delays and resolving disputes, as described in 5 U.S.C. 552(k)(6).

(d) Authority to administer this subpart and to issue determinations with respect to initial requests and appeals of initial denials has been delegated as follows:

(1) To the General Counsel for the records of the Office of the Secretary by 49 CFR 1.27.

(2) To the Inspector General for records of the Office of Inspector General by 49 CFR 1.74.

(3) To the Administrator of each DOT Operating Administration for records of that component by 49 CFR 1.81.

(4) Each responsible DOT official may redelegate the authority to issue final determinations of appeals of initial denials to that official's deputy or to not more than one other officer who reports directly to the official and who is located at the headquarters of that DOT component.

(5) Any such final determination by an Administrator or an Administrator's designee (following an appeal of an initial denial) is subject to concurrence by the General Counsel or the General Counsel's designee, if the final determination is not to disclose a record or portion of a record under this part, or not to grant a request for a fee waiver or reduction.

(6) The Inspector General or the Inspector General's designee must consult with the General Counsel or the General Counsel's designee before issuing a final determination following an appeal of an initial denial, if the final determination is not to disclose a record or portion of a record under this part, or not to grant a request for a fee waiver or reduction.

§ 7.23 What limitations apply to disclosure?

(a) *Policy.* It is DOT policy to make its records available to the public to the greatest extent possible, in keeping with the spirit of FOIA. This includes releasing reasonably segregable and meaningful nonexempt information in a document from which exempt information is withheld.

(b) *Statutory disclosure requirement.* As provided in 5 U.S.C. 552(a)(3)(A), DOT makes reasonably described records available upon request from a member of the public, when the request is submitted in accordance with this subpart, except to the extent that the records contain information exempt from FOIA's mandate of disclosure as provided in 5 U.S.C. 552(b).

(c) *Statutory exemptions.* Exempted from FOIA's statutory disclosure requirement are matters that are:

(1) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and are in fact properly classified pursuant to such Executive Order;

(2) Related solely to the internal personnel rules and practices of an agency;

(3) Specifically exempted from disclosure by statute (other than the Privacy Act, 5 U.S.C. 552a, or Open Meetings Act, 5 U.S.C. 552b, as amended), in that the statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, establishes particular criteria for withholding, or refers to particular types of matters to be withheld; or

(ii) Specifically allows withholding from release under FOIA by citation to 5 U.S.C. 552;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information—

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, tribal, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions, if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the

regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(d) *Redacted information.* DOT indicates the amount of information redacted from records released under the FOIA and the exemption(s) relied upon in redacting the information, at the place in the record where the redaction is made, when technically feasible and when doing so does not harm an interest protected by the exemption concerned.

(e) *Non-confidentiality of requests.* DOT releases the names of FOIA requesters and descriptions of the records they have sought, as shown on DOT FOIA logs, except to the extent that a statutory exemption authorizes or requires withholding of the log information.

§ 7.24 How do I submit a FOIA request?

(a) Each person desiring access to or a copy of a record covered by this subpart must make a written request (via paper, facsimile or electronic mail) for the record. The request should—

(1) Indicate that it is being made under FOIA;

(2) Display the word ''FOIA'' prominently on the envelope or on the subject line of the email or facsimile;

(3) Be addressed to the appropriate FOIA Requester Service Center as set forth in § 7.27;

(4) State the format (e.g., paper, compact disc) in which the information is sought, if the requester has a preference (see § 7.26(c)); and

(5) Describe the record or records sought to the fullest extent possible. In this regard, the request should describe the subject matter of the record and, if known, indicate the date when it was made, the place where it was made, and the individual or office that made it. If the description does not enable the office handling the request to identify or locate the record sought, that office will contact the requester for additional information. So that the office may contact the requester for additional information, the request should provide the requester's complete contact information, including name, address, telephone number, and email address, if any.

(b) With respect to fees, the request must—

(1) Specify the fee category (commercial use, news media, educational institution, noncommercial scientific institution, or other; see § 7.42(g)) in which the requester claims the request falls and the basis of this claim (see subpart E of this Part for fees and fee waiver requirements);

(2) Support any request for fee waiver by addressing, to the fullest extent possible, how the criteria set out in § 7.43(c) for establishing that the request is in the public interest have been met, if relevant;

(3) State the maximum amount of fees that the requester is willing to pay and/or include a request for a fee waiver or reduction (if a maximum amount is not stated by the requester, DOT will assume the requester is willing to pay up to US $25);

(c) If the requester seeks expedited processing at the time of the initial request, the request must include a statement supporting expedited processing, as set forth in § 7.31(c);

(d) A request is not considered to be a FOIA request if the record or records sought are insufficiently described such that DOT is unable to respond as required by FOIA. The twenty Federal working day limit for responding to requests, described in § 7.31(a)(2), will not start to run until the request is determined by DOT to be sufficiently understood to enable DOT to respond as contemplated under FOIA (or would have been so determined with the exercise of due diligence by an employee of DOT) and is considered received (see paragraph (e)); and

(e) Provided the request is considered to be a FOIA request (see paragraph (d)), the request is considered received when it is first received by the FOIA office to which it should have been originally sent, as shown in § 7.27, but in any event not later than ten Federal working days after it is first received by any DOT FOIA Requester Service Center identified in § 7.27.

(f) As provided in § 7.35, DOT's time limit for responding to a FOIA request as set forth in subpart D may be tolled one time to seek additional information needed to clarify the request and as often as necessary to clarify fee issues with the requester.

§ 7.25 How does DOT handle first-party requests?

(a) DOT processes FOIA requests from first-party requesters in accordance with this regulation. DOT also processes such requests in accordance with the Privacy Act (5 U.S.C. 552a) if the records reside in a Privacy Act system of records (defined in 5 U.S.C. 552a(a)(5) as a system from which information is retrieved by the individual's name or some other personal identifier). Whichever statute provides greater access is controlling.

(b) First party requesters must establish their identity to DOT's satisfaction before DOT will process the request under the Privacy Act. DOT may request that first party requesters authenticate their identity to assist with our evaluation of the application of FOIA exemptions, such as FOIA Exemption 6, 5 U.S.C. 552(b)(6), to the requested records. Acceptable methods of authenticating the requester's identity include those outlined in DOT's Privacy Act regulations at 49 CFR 10.37.

§ 7.26 To what extent and in what format are records searched and made available?

(a) *Existing records.* A request may seek only records that are in existence at the time of the request. In determining which records are responsive to a request, DOT ordinarily will include only records in its possession as of the date it begins its search for them. If any other date is used, DOT will inform the requester of that date. DOT considers records created after the beginning of the search to be non-responsive to a request. A request made under this subpart may not require that new records be created in response to the request by, for example, combining or compiling selected items from manual files, preparing a new computer program, or calculating proportions, percentages, frequency distributions, trends, or comparisons. DOT may, in its discretion, create a new record as an alternative to disclosing existing records, if DOT determines that creating a new record will be less burdensome than disclosing large volumes of unassembled material and if the requester consents to accept the newly-created record in lieu of the existing records.

(b) *Electronic records.* DOT makes a reasonable effort to search electronic records without significantly interfering with the operation of the affected information system.

(c) *Format of production.* DOT provides records in the form or format sought by the requester, if the records are readily reproducible in that form or format.

(d) *Photocopying of records.* Original records ordinarily are copied except where, in DOT's judgment, copying would endanger the quality of the original or raise the reasonable possibility of irreparable harm to the record. Original records are not released from DOT custody. DOT may make records requested under this subpart available for inspection and copying during regular business hours at the place where the records are located.

(e) *If no responsive record is located.* If DOT cannot locate a requested record in agency files after a reasonable search (e.g., because the record was never

created or was disposed of), DOT so notifies the requester.

§ 7.27 What are the designated DOT FOIA Requester Service Centers?

(a) A request for a record under this subpart may be submitted via paper, facsimile, or electronic mail to the FOIA Requester Service Center designated for the DOT component where the records are located, at the electronic mail addresses or facsimile numbers identified at *http://www.dot.gov/foia* or the mailing addresses indicated below (unless a more up-to-date mailing address has been designated at *http://www.dot.gov/foia*):

(1) FOIA Requester Service Centers at 1200 New Jersey Avenue SE., Washington, DC 20590:

(i) FOIA Requester Service Center at Federal Highway Administration, Room E64–302 (unless a more specific address has been designated by FHWA at *http://www.fhwa.dot.gov/foia*);

(ii) FOIA Requester Service Center at Federal Motor Carrier Safety Administration, Room W66–458;

(iii) FOIA Requester Service Center at Federal Railroad Administration, Room W33–437;

(iv) FOIA Requester Service Center at Federal Transit Administration, Room E42–315;

(v) FOIA Requester Service Center at Maritime Administration, Room W24–233;

(vi) FOIA Requester Service Center at National Highway Traffic Safety Administration, Room W41–311;

(vii) FOIA Requester Service Center at Office of the Secretary of Transportation, Room W94–122;

(viii) FOIA Requester Service Center at Office of Inspector General, Room W70–329;

(ix) FOIA Requester Service Center at Pipeline and Hazardous Materials Safety Administration, Room E23–306; and

(2) FOIA Requester Service Center at Federal Aviation Administration, 800 Independence Avenue SW., Room 306, Washington, DC 20591 (unless a more specific address has been designated by FAA at *http://www.faa.dot.gov/foia*).

(3) FOIA Requester Service Center at Associate Administrator's Office, Saint Lawrence Seaway Development Corporation, 180 Andrews Street, P.O. Box 520, Massena, NY 13662–0520.

(b) If the person making the request does not know where in DOT the records are located, the person may submit the request to the FOIA Requester Service Center at Office of the Secretary of Transportation, 1200 New Jersey Avenue SE., Room W94–122, Washington, DC 20590 or by facsimile: 202–366–8536. Requesters also may contact the FOIA Requester Service Center at the Office of the Secretary of Transportation at 202–366–4542 with questions about how to submit a FOIA request or to confirm the mailing addresses indicated in this part.

(c) Requests for records under this part, and FOIA inquiries generally, may be made by accessing the DOT Home Page on the Internet (*http://www.dot.gov*) and clicking on the Freedom of Information Act link (*http://www.dot.gov/foia*).

§ 7.28 How does DOT handle requests that concern more than one Government agency?

(a) If the release of a DOT-created record covered by this subpart would be of concern to DOT and one or more other Federal agencies, the determination as to release is made by DOT, but only after consultation with the other concerned agency.

(b) If the release of a DOT-created record covered by this subpart would be of concern to DOT and a State, local, or tribal Government, a territory or possession of the United States, or a foreign Government, the determination as to release is made by DOT, but only after consultation with the other concerned Governmental jurisdiction.

(c) DOT refers a request for a non-DOT-created record covered by this subpart (or the relevant portion thereof) for decision by the Federal agency that is best able to determine the record's exemption status (usually, this is the agency that originated the record), but only if that agency is subject to FOIA. DOT makes such referrals expeditiously and notifies the requester in writing that a referral has been made. DOT informs the requester that the Federal agency to which DOT referred the request will respond to the request, unless DOT is precluded from attributing the record in question to that agency.

(d) DOT components will handle all consultations and referrals they receive from other agencies or DOT components according to the date the FOIA request initially was received by the first agency or DOT component, not any later date.

§ 7.29 When and how does DOT consult with submitters of commercial information?

(a) If DOT receives a request for a record that includes information designated by the submitter of the information as confidential commercial information, or that DOT has some other reason to believe may contain information of that type (see § 7.23(c)(4)), DOT notifies the submitter expeditiously and asks the submitter to submit any written objections to release (unless paragraphs (c) and (d) of this section apply). At the same time, DOT notifies the requester that notice and an opportunity to comment are being provided to the submitter. To the extent permitted by law, DOT affords the submitter a reasonable period of time to provide a detailed statement of any such objections. The submitter's statement must specify all grounds for withholding any of the information. The burden is on the submitter to identify with specificity all information for which exempt treatment is sought and to persuade the agency that the information should not be disclosed.

(b) The responsible DOT component, to the extent permitted by law, considers carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose commercial information. Whenever DOT decides to disclose such information over the objection of a submitter, the office responsible for the decision provides the submitter with a written notice of intent to disclose, which is sent to the submitter a reasonable number of days prior to the specified date upon which disclosure is intended. The written notice to the submitter includes:

(1) A statement of the reasons for which the submitter's disclosure objections were not accepted;

(2) A description of the commercial information to be disclosed; and

(3) A specific disclosure date.

(c) The notice requirements of this section do not apply if:

(1) DOT determines that the information should not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(d) The procedures established in this section do not apply in the case of:

(1) Information submitted to the National Highway Traffic Safety Administration and addressed in 49 CFR part 512.

(2) Information contained in a document to be filed or in oral testimony that is sought to be withheld pursuant to Rule 12 of the Rules of Practice in Aviation Economic Proceedings (14 CFR 302.12).

(e) Whenever a requester brings suit seeking to compel disclosure of confidential commercial information, the responsible DOT component promptly notifies the submitter. The submitter may be joined as a necessary party in any suit brought against DOT or a DOT component for nondisclosure.

Subpart D—Time Limits

§ 7.31 What time limits apply to DOT with respect to initial determinations?

(a) *In general.* (1) DOT ordinarily responds to requests according to their order of receipt.

(2) DOT makes an initial determination whether to release a record requested pursuant to subpart C of this Part within twenty Federal working days after the request is received by the appropriate FOIA Requester Service Center designated in § 7.27, except that DOT may extend this time limit by up to ten Federal working days, or longer, in accordance with § 7.34. In addition, DOT may toll this time limit one time to seek additional information needed to clarify the request and as often as necessary to clarify fee issues with the requester (see § 7.35).

(3) DOT notifies the requester of DOT's initial determination. If DOT decides to grant the request in full or in part, DOT makes the record (or the granted part) available as promptly as possible. If DOT denies the request in full or in part, because the record (or the denied part) is subject to an exemption, is not within DOT's custody and control, or was not located following a reasonable search, DOT notifies the requester of the denial in writing and includes in the notice the reason for the determination, the right of the requester to appeal the determination, and the name and title of each individual responsible for the initial determination to deny the request. The denial letter includes an estimate of the volume of records or information withheld, in number of pages or other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption. DOT marks or annotates records disclosed in part to show both the amount and location of the information deleted whenever practicable (see § 7.23(d)).

(b) *Multi-track processing of initial requests.* (1) A DOT component may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process the request, or based on the number of pages involved.

(2) A DOT component using multi-track processing may provide requesters in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of the component's faster track(s). In that event, the component contacts the requester either by telephone, letter, facsimile, or electronic mail, whichever is most efficient in each case.

(3) Upon receipt of a request that will take longer than ten days to process, a DOT component shall assign an individualized tracking number to the request and notify the requester of the assigned number. Requesters may contact the appropriate DOT component FOIA Requester Service Center to determine the status of the request.

(c) *Expedited processing of initial requests.* (1) Requests are processed out of order and given expedited treatment whenever a compelling need is demonstrated and DOT determines that the compelling need involves:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) A request made by a person primarily engaged in disseminating information, with a time urgency to inform the public of actual or alleged Federal Government activity.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time. For a prompt determination, the request for expedited processing must be received by the FOIA office for the component that maintains the records requested, as identified in § 7.27.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that individual's knowledge and belief, explaining in detail the basis for requesting expedited processing. A requester within the category in paragraph (c)(1)(ii) of this section must establish a particular urgency to inform the public about the Government activity involved in the request, beyond the public's right to know about Government activity generally.

(4) Within ten calendar days of receipt of a request for expedited processing, the proper component decides whether to grant it and notifies the requester of the decision. If DOT grants a request for expedited treatment, the request is given priority and is processed as soon as practicable. If DOT denies a request for expedited processing, any appeal of that denial is acted on expeditiously.

§ 7.32 What time limits apply to a requester when appealing DOT's initial or final determination?

(a) *Denial of records request.* When the responsible DOT official determines that a record request will be denied, in whole or in part, because the record is subject to an exemption, is not in DOT's custody and control, or was not located following a reasonable search, DOT provides the requester with a written statement of the reasons for that determination, as described in § 7.31(a)(3), and of the right to appeal the determination within DOT.

(b) *Denial of fee waiver.* When the responsible DOT official denies, in whole or in part, a request for a waiver of fees made pursuant to § 7.24(b) or § 7.43(c), DOT provides the requester with written notification of that determination and of the right to appeal the determination within DOT.

(c) *Denial of expedited processing.* When the responsible DOT official denies a request for expedited processing made pursuant to § 7.31(c), DOT provides the requester with written notice of that determination and of the right to appeal the determination within DOT.

(d) *Right to administrative appeal.* Any requester to whom a record has not been made available within the time limits established by § 7.31 and any requester who has been provided a written determination pursuant to paragraphs (a), (b), or (c) of this section may appeal to the responsible DOT official.

(1) Each appeal must be made in writing to the appropriate DOT appeal official and postmarked or, in the case of electronic or facsimile transmissions transmitted, within forty-five calendar days from the date the initial determination is signed and should include the DOT file or reference number assigned to the request and all information and arguments relied upon by the person making the request. The contact information for all DOT component appeal officials is identified in the DOT FOIA Reference Guide. The envelope in which a mailed appeal is sent or the subject line of an appeal sent electronically or by facsimile should be prominently marked: ''FOIA Appeal.'' The twenty Federal working day limit described in § 7.33(a) will not begin to run until the appeal has been received by the appropriate office and identified as an appeal under FOIA, or would have been so identified with the exercise of due diligence, by a DOT employee.

(2) Whenever the responsible DOT official determines it is necessary, the official may require the requester to furnish additional information, or proof of factual allegations, and may order other proceedings appropriate in the circumstances. DOT's time limit for responding to an appeal may be extended as provided in § 7.34. The decision of the responsible DOT official as to the availability of the record, the

appropriateness of a fee waiver or reduction, or the appropriateness of expedited processing, constitutes final agency action for the purpose of judicial review.

(3) The decision of the responsible DOT official to deny a record request, to deny a request for a fee waiver or reduction, or to deny a request for expedited processing is considered to be a denial by the Secretary for the purpose of 5 U.S.C. 552(a)(4)(B).

(4) When the responsible DOT official denies an appeal, the requester is informed in writing of the reasons for the denial of the request and the names and titles or positions of each person responsible for the determination, and that judicial review of the determination is available in the United States District Court for the judicial district in which the requester resides or has his or her principal place of business, the judicial district in which the requested records are located, or the District of Columbia.

(e) *Right to judicial review.* Any requester who has not received an initial determination on his or her request within the time limits established by § 7.31 can seek immediate judicial review, which may be sought without the need to first submit an administrative appeal. Any requester who has received a written determination denying his or her administrative appeal or who has not received a written determination of his or her administrative appeal within the time limits established by § 7.33 can seek judicial review. A determination that a record request is denied, that a request for a fee waiver or reduction is denied, and/or that a request for expedited processing is denied does not constitute final agency action for the purpose of judicial review unless it is made by the responsible DOT official. Judicial review may be sought in the United States District Court for the judicial district in which the requester resides or has his or her principal place of business, the judicial district in which the requested records are located, or the District of Columbia.

§ 7.33 What time limits apply to DOT with respect to administrative appeals (final determinations)?

(a) *In general.* (1) DOT ordinarily processes appeals according to their order of receipt.

(2) DOT issues a determination with respect to any appeal made pursuant to § 7.32(d) within twenty Federal working days after receipt of such appeal, except that in unusual circumstances DOT may extend this time limit by up to ten Federal working days in accordance with § 7.34(a) or for more than ten Federal working days in accordance with § 7.34(b). DOT notifies the requester making the appeal immediately, in writing, if the agency takes an extension of time. DOT may inform the requester making the appeal, at any time, of exceptional circumstances delaying the processing of the appeal (see § 7.34(c)).

(b) *Multi-track processing of appeals.* (1) A DOT component may use two or more processing tracks by distinguishing between simple and more complex appeals based on the amount of work and/or time needed to process the appeal, or based on the amount of information involved.

(2) A DOT component using multi-track processing may provide persons making appeals in its slower track(s) with an opportunity to limit the scope of their appeals in order to qualify for faster processing within the specified limits of the component's faster track(s). A component doing so will contact the person making the appeal either by telephone, letter, facsimile, or electronic mail, whichever is most efficient in each case.

(c) *Expedited processing of appeals.* (1) An appeal is processed out of order and given expedited treatment whenever a compelling need is demonstrated and DOT determines that the compelling need involves:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) A request made by a person primarily engaged in disseminating information, with a time urgency to inform the public of actual or alleged Federal Government activity.

(2) A request for expedited processing may be made at the time of the appeal or at a later time. For a prompt determination, a request for expedited processing must be received by the component that is processing the appeal for the records requested.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that individual's knowledge and belief, explaining in detail the basis for requesting expedited processing. A requester within the category in paragraph (c)(1)(ii) of this section must establish a particular time urgency to inform the public about the Government activity involved in the request, beyond the public's right to know about Government activity generally. A person granted expedited processing under § 7.31(c) need merely certify that the same circumstances apply.

(4) Within ten calendar days of receipt of a request for expedited processing, the proper component will decide whether to grant it and will notify the requester of the decision. If a request for expedited treatment is granted, the appeal will be given priority and will be processed as soon as practicable. If a request for expedited processing of an appeal is denied, no further administrative recourse is available.

§ 7.34 When and how are time limits applicable to DOT extended?

(a) In unusual circumstances as specified in this section, DOT may extend the time limits prescribed in §§ 7.31 and 7.33 by written notice to the person making the request or appeal, setting forth the reasons for the extension and the date on which a determination is expected to be issued. Such notice may not specify a date that would result in a cumulative extension of more than ten Federal working days without providing the requester an opportunity to modify the request as noted in this section. As used in this paragraph, ''unusual circumstances'' means, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request; and/or

(3) The need for consultation, which will be conducted with all practicable speed, with any other agency having a substantial interest in the determination of the request or among two or more DOT components having substantial interest therein.

(b) When the extension is for more than ten Federal working days, the written notice provides the requester with an opportunity to either modify the request (e.g., by narrowing the record types or date ranges) so that it may be processed within the extended time limit, or arrange an alternative time period with the DOT component for processing the request (e.g., by prioritizing portions of the request).

(c) The DOT component may inform the requester, at any time, of exceptional circumstances that apply to the processing of the request or appeal (e.g., if the component is reducing a backlog of requests or appeals in addition to processing current requests, or is experiencing an unexpected deluge of

requests or appeals), as provided in 5 U.S.C. 552(a)(6)(C).

(d) When a DOT component reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, DOT may aggregate the requests for the purposes of fees and processing activities, which may result in an extension of the processing time. Multiple requests involving unrelated matters are not aggregated.

§ 7.35 When and how is the twenty day time limit for rendering an initial determination tolled?

The twenty Federal working day time period in which to render an initial determination will proceed without interruption except as provided in the following circumstances:

(a) DOT may toll the initial twenty Federal working day time period one time for the purpose of seeking additional information needed to clarify the request. Examples of such instances include but are not limited to:

(1) When clarification is needed with regard to the scope of a request; or

(2) When the description of the record(s) being sought does not enable the component handling the request to identify or locate the record(s).

(b) DOT may toll the initial twenty Federal working day time period as often as necessary to clarify fee issues with the requester. Examples of such instances include but are not limited to:

(1) When the requester has not sufficiently identified the fee category applicable to the request;

(2) When the requester has not stated a willingness to pay fees as high as anticipated by DOT; or

(3) When a fee waiver request is denied and the requester has not included an alternative statement of willingness to pay fees as high as anticipated by DOT.

Subpart E—Fees

§ 7.41 When and how are processing fees imposed for records that are made available under subpart B or processed under subpart C of this part?

(a) DOT imposes fees for services that DOT performs for the public under subparts B and C of this part. Fees apply to all required and special services performed by DOT employees, including employees of non-appropriated fund activities, and contractors, if utilized.

(b) DOT may assess a fee for time spent searching for records requested under subpart C even if the search fails to locate records or the records located are determined to be exempt from disclosure. In addition, if records are requested for commercial use, DOT may assess a fee for time spent reviewing any responsive records located to determine whether they are exempt from disclosure.

(c) When a request is made under subpart C by a first-party requester and DOT processes the request under both FOIA and the Privacy Act, DOT determines the fees for records in DOT Privacy Act systems of record in accordance with the Privacy Act (as implemented by DOT regulations at 49 CFR part 10) rather than the FOIA.

(d) When DOT aggregates requests made under subpart C (see § 7.34(d)), DOT apportions fees as set forth in § 7.43(b).

(e) As a special service, DOT may certify copies of records made available under subpart B or released under subpart C, upon request and payment of the applicable fee: with the DOT seal (where authorized)—US $10; or true copy, without seal—US $5. Certified copies can be requested by contacting the applicable FOIA Requester Service Center (see § 7.27) or the DOT Dockets Office identified in § 7.12(b)(1).

(f) DOT makes transcripts of hearings or oral arguments available for inspection only. If transcripts are prepared by a nongovernmental contractor and the contract permits DOT to handle the reproduction of further copies, DOT assesses duplication fees as set forth in § 7.42(d). If the contract for transcription services reserves the sales privilege to the reporting service, any duplicate copies must be purchased directly from the reporting service.

(g) In the interest of making documents of general interest publicly available at as low a cost as possible, DOT arranges alternative sources whenever possible. In appropriate instances, material that is published and offered for sale may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–0001; U.S. Department of Commerce's National Technical Information Service (NTIS), Springfield, VA 22151; or National Audio-Visual Center, National Archives and Records Administration, Capital Heights, MD 20743–3701.

§ 7.42 What is DOT's fee schedule for records requested under subpart C of this part?

(a) DOT calculates the hourly rates for manual searching, computer operator/programmer time, and time spent reviewing records, when performed by employees, based on the grades and rates in the General Schedule Locality Pay Table for the Locality of Washington-Baltimore-Northern Virginia, DC-MD-VA-WV-PA, or equivalent grades, plus 16% to cover fringe benefits, as follows:

(1) GS–1 through GS–8 (or equivalent)—Hourly rate of GS–5 step 7 plus 16%;

(2) GS–9 through GS–12 (or equivalent)—Hourly rate of GS–10 step 7 plus 16%;

(3) GS–13 through GS–14 (or equivalent)—Hourly rate of GS–13 step 7 plus 16%; and

(4) GS–15 and above (or equivalent)—Hourly rate of GS–15 step 7 plus 16%.

(b) DOT determines the standard fee for a manual or electronic search to locate records by multiplying the searcher's hourly rate as set forth in paragraph (a) of this section by the time spent conducting the search.

(c) DOT's standard fee for review of records is the reviewer's rate set forth in paragraph (a) of this section, multiplied by the time the reviewer spent determining whether the located records are responsive to the request and whether the responsive records or segregable portions are exempt from disclosure, as explained in paragraphs (h), (i), and (j) of this section.

(d) DOT determines the standard fee for duplication of records as follows:

(1) Per copy of each page (not larger than 8.5×14 inches) reproduced by photocopy or similar means (includes costs of personnel and equipment)—US $0.10.

(2) Per copy prepared by any other method of duplication—actual direct cost of production.

(e) If DOT utilizes a contractor to perform any services described in this section, the standard fee is based on the equivalent hourly rate(s). DOT does not utilize contractors to discharge responsibilities that only DOT may discharge under the FOIA.

(f) In some cases, depending upon the category of requester and the use for which the records are requested, the fees computed in accordance with the standard fee schedule in paragraphs (a) through (e) of this section are either reduced or not charged, as prescribed by other provisions of this subpart.

(g) For purposes of fees only, there are four categories of FOIA requests:

(1) Requests submitted by a commercial entity and/or for a commercial use;

(2) Requests submitted by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research (and not for a commercial use);

(3) Requests submitted by a representative of the news media; and

(4) All other requests.

(h) When records are requested by a commercial requester and/or for a commercial use, the fees assessed are reasonable standard charges for document search, duplication, and review.

(i) When records are requested by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research or by a representative of the news media (i.e., for a non-commercial use), fees are limited to reasonable standard charges for document duplication.

(j) For any request not described in paragraph (h) or (i) of this section, fees are limited to reasonable standard charges for document search and duplication.

(k) Fees under this subpart do not apply to any special study, special statistical compilation, table, or other record requested under 49 U.S.C. 329(c). The fee for the performance of such a service is the actual cost of the work involved in compiling the record. All such fees received by DOT in payment of the cost of such work are deposited in a separate account administered under the direction of the Secretary, and may be used for the ordinary expenses incidental to providing the information.

§ 7.43 When are fees waived or reduced for records requested under subpart C of this part?

(a) DOT does not charge fees to any requester making a request under subpart C of this part for the following services:

(1) Services for which the total amount of fees that could be charged for the particular request (or aggregation of requests) is less than US $20, after taking into account all services that must be provided free of charge or at a reduced charge.

(2) The first two hours of search time, unless the records are requested for commercial use.

(3) Duplication of the first 100 pages (standard paper, not larger than 8.5 × 14 inches) of records, unless the records are requested for commercial use.

(4) Review time spent determining whether a record is exempt from disclosure, unless the record is requested for commercial use. DOT does not charge for review time except with respect to an initial review to determine the applicability of a particular exemption to a particular record or portion of a record. DOT does not charge for review at the administrative appeal level. However, when records or portions of records withheld under an exemption that is subsequently determined not to apply are reviewed again to determine the applicability of other exemptions not previously considered, this is considered an initial review for purposes of assessing a review charge.

(b) When DOT aggregates requests as provided in § 7.34(d), DOT charges each requester a ratable portion of the fees charged for combined services rendered on behalf of all requesters.

(c) DOT waives or reduces the fees described in § 7.42(i) and (j) when the requester makes a fee waiver or reduction request as provided in § 7.24(b) and establishes that disclosure of the information is in the public interest as provided in 5 U.S.C. 552 and this paragraph, and the DOT official having initial denial authority determines that disclosure of the information is in the public interest and is not primarily in the commercial interest of the requester. The requester must establish all of the following factors to DOT's satisfaction to show that the request is in the public interest:

(1) That the subject matter of the requested records concerns the operations or activities of the Federal Government;

(2) That the disclosure is likely to contribute to an understanding of Federal Government operations or activities;

(3) That disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the understanding of the individual requester or a narrow segment of interested persons (to establish this factor, the requester must show an intent and ability to disseminate the requested information to a reasonably broad audience of persons interested in the subject);

(4) That the contribution to public understanding of Federal Government operations or activities will be significant; and

(5) That the requester does not have a commercial interest that would be furthered by the requested disclosure or that the magnitude of any identified commercial interest to the requester is not sufficiently large in comparison with the public interest in disclosure to render the disclosure one that is primarily in the commercial interest of the requester.

(d) DOT furnishes documents without charge or at a reduced charge when the official having initial denial authority determines that the request concerns records related to the death of an immediate family member who was, at the time of death, a DOT employee.

(e) DOT furnishes documents without charge or at a reduced charge when the official having initial denial authority determines that the request is by the victim of a crime who seeks the record of the trial at which the requester testified.

(f) DOT does not assess the following fees when DOT fails to comply with the time limits under § 7.31 or § 7.33 and no unusual or exceptional circumstances (see § 7.34(a) and (c)) apply to the processing of the request or appeal:

(1) Search fees otherwise chargeable under § 7.42(h) and (j); and

(2) Duplication fees otherwise chargeable under § 7.42(i).

§ 7.44 How can I pay a processing fee for records requested under subpart B or subpart C of this part?

Fees typically should be paid online, using a credit card, debit card, or electronic check. The DOT FOIA page (*http://www.dot.gov/foia*) has direct links to the electronic payment site. Any fees paid with a paper check, draft, or money order must be made payable to the U.S. Treasury and delivered as directed by the applicable FOIA Requester Service Center identified in § 7.27 (if the fees are for records made available under subpart C) or the DOT Dockets Office identified in § 7.12(b)(1) (if the fees are for records made available under subpart B).

§ 7.45 When are pre-payments required for records requested under subpart C of this part, and how are they handled?

(a) When DOT estimates that the search charges, review charges, duplication fees, or any combination of fees that could be charged to the requester will likely exceed US $25, DOT notifies the requester of the estimated amount of the fees, unless the requester has previously indicated a willingness to pay fees as high as those anticipated. In cases where DOT notifies the requester that actual or estimated fees may amount to more than US $25, the time limit for responding to the request is tolled until the requester has agreed to pay the anticipated total fee (see § 7.35). The notice also informs the requester how to consult with the appropriate DOT officials with the object of reformulating the request to meet his or her needs at a lower cost.

(b) DOT may require payment of fees prior to actual duplication or delivery of any releasable records to a requester. However, advance payment, i.e., before work is commenced or continued on a request, is not required unless:

(1) Allowable charges that a requester may be required to pay are likely to exceed US $250; or

(2) The requester has failed to pay within 30 days of the billing date fees charged for a previous request to any part of the U.S. Government.

(c) When paragraph (b)(1) of this section applies, DOT notifies the requester of the estimated cost. If the requester has a history of prompt payment of FOIA fees, the requester must furnish satisfactory assurance of full payment of the estimated charges. Otherwise, the requester may be required to make advance payment of any amount up to the full estimated charges.

(d) When paragraph (b)(2) of this section applies, DOT requires the requester to either demonstrate that the fee has been paid or pay the full amount owed, including any applicable interest, late handling charges, and penalty charges as discussed in § 7.46. DOT also requires such a requester to make an advance payment of the full amount of the estimated fee before DOT begins processing a new request or continues processing a pending request.

(e) In the event that a DOT component is required to refund a prepayment, the processing of the refund may necessitate collection of the requester's Taxpayer Identification Number or Social Security Number and direct deposit information (bank routing number and bank account number) under 31 U.S.C. 3325, 31 U.S.C. 3332, and 31 CFR Part 208.

§ 7.46 How are late payments handled?

(a) DOT assesses interest on an unpaid bill starting on the 31st day following the day on which the notice of the amount due is first mailed to the requester. Interest accrues from the date of the notice of amount due at the rate prescribed in 31 U.S.C. 3717. Receipt by DOT of a payment for the full amount of the fees owed within 30 calendar days after the date of the initial billing stops the accrual of interest, even if the payment has not been processed.

(b) If DOT does not receive payment of the fees charged within 30 calendar days after the date the initial notice of the amount due is first mailed to the requester, DOT assesses an administrative charge to cover the cost of processing and handling the delinquent claim. In addition, DOT applies a penalty charge with respect to any principal amount of a debt that is more than 90 days past due. Where appropriate, DOT uses other steps permitted by Federal debt collection statutes, including disclosure to consumer reporting agencies and use of collection agencies, to encourage payment of amounts overdue.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 272

[Docket No. FRA–2008–0131, Notice No. 2]

RIN 2130–AC00

Critical Incident Stress Plans

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA issues this final rule in accordance with a statutory mandate that the Secretary of Transportation (Secretary) require certain major railroads to develop, and submit to the Secretary for approval, critical incident stress plans that provide for appropriate support services to be offered to their employees who are affected by a ''critical incident'' as defined by the Secretary. The final rule contains a definition of the term ''critical incident,'' the elements appropriate for the rail environment to be included in a railroad's critical incident stress plan, the type of employees to be covered by the plan, a requirement that a covered railroad submit its plan to FRA for approval, and a requirement that a railroad adopt and comply with its FRA-approved plan.

DATES: This final rule is effective on June 23, 2014. Petitions for reconsideration must be received by May 27, 2014.

ADDRESSES: Petitions for reconsideration and comments on petitions for reconsideration: Any petitions for reconsideration or comments on petitions for reconsideration related to this Docket No. FRA–2008–0131, Notice No. 2 may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.Regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, West Building, Ground floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Please note that all comments received will be posted without change to *www.Regulations.gov,* including any personal information provided. Please see the discussion under the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *www.Regulations.gov* at any time or visit the Docket Management Facility, U.S. Department of Transportation, West Building, Ground floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For program issues: Dr. Bernard J. Arseneau, Medical Director, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: (202) 493–6232), *Bernard.Arseneau@dot.gov;* or Ronald Hynes, Director, Office of Safety Assurance and Compliance, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: (202) 493–6404), *Ronald.Hynes@dot.gov.* For legal issues: Veronica Chittim, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Washington, DC 20950 (telephone: (202) 493–0273), *Veronica.Chittim@dot.gov;* or Gahan Christenson, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Washington, DC 20950 (telephone: (202) 493–1381), *Gahan.Christenson@dot.gov.*

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I. Executive Summary

This final rule requires each Class I railroad, intercity passenger railroad, and commuter railroad to establish and implement a critical incident stress plan for certain employees of the railroad who are directly involved in, witness, or respond to, a critical incident.

Although FRA has never regulated critical incident stress plans, many railroads have had some form of critical incident stress plan in place for many years. This rulemaking responds to the Rail Safety Improvement Act of 2008 (Pub. L. 110–432, Div. A) (RSIA) mandate that the Secretary of Transportation establish regulations to define ''critical incident'' and to require certain railroads to develop and implement critical incident stress plans.

FRA received several public comments in response to FRA's June 28, 2013, notice of proposed rulemaking on Critical Incident Stress Plans (NPRM), *see* 78 FR 38878. Comments include remarks on FRA's proposals related to the definition of critical incident, the content of critical incident stress plans, the proposed process for submitting critical incident stress plans to FRA for approval and assuring all relevant railroad personnel are aware of the relief available pursuant to a railroad's plan. After careful consideration of each comment received, in this final rule FRA is adopting the rule text substantially as proposed in the NPRM, except for clarifying changes to 49 CFR 272.101(a) and (f), and making electronic submission mandatory in 49 CFR 272.105.

As discussed in detail below, FRA reviewed the applicable science and information received through the Railroad Safety Advisory Committee (RSAC), and as required by Congress, in this final rule, FRA defines ''critical incident'' and requires a set of minimum standards for critical incident stress plans. This approach provides covered employees with options for relief following a critical incident, yet allows for substantial flexibility within the regulatory framework so that railroads may adapt their plans commensurate with their needs. The final rule defines a ''critical incident'' as either—(1) An accident/incident reportable to FRA under 49 CFR part 225 that results in a fatality, loss of limb, or a similarly serious bodily injury; or (2) A catastrophic accident/incident reportable to FRA under part 225 that could be reasonably expected to impair a directly-involved employee's ability to perform his or her job duties safely. The required set of minimum standards for critical incident stress plans include allowing a directly-involved employee to obtain relief from the remainder of the tour of duty, providing for the directly-involved employee's transportation to the home terminal (if applicable), and offering a directly-involved employee appropriate support services following a critical incident. This final rule requires that each railroad subject to this rule submit its plan to FRA for approval.

FRA has analyzed the economic impacts of this final rule against a ''status quo'' baseline that reflects present conditions (*i.e.,* primarily what applicable railroads are already doing with respect to critical incident policy). As done when preparing the NPRM and based on both RSAC meetings and discussions with the rail industry, FRA's analysis assumes that all railroads affected by the final rule currently have policies that include a critical incident stress plan, thereby reducing the costs of compliance associated with this final rule. In estimating these compliance costs, FRA included costs associated with training supervisors on how to interact with railroad employees who have been affected by a critical incident, employee training, counseling, and other support services, and costs associated with the submission of critical incident stress plans to FRA for approval. FRA estimates that the costs of the final rule for a 20-year period would total $1,943,565. Using a 7 percent and a 3 percent discount rate, the total discounted costs will be $1,337,830 and $1,615,519, respectively.

The final rule contains minimum standards for leave, counseling, and other support services. These standards would help create benefits by providing employees with knowledge, coping skills, and services that would help them: (1) Recognize and cope with symptoms of normal stress reactions that commonly occur as a result of a critical incident; (2) reduce their chance of developing a disorder such as depression, Post-Traumatic Stress Disorder (PTSD), or Acute Stress Disorder (ASD) as a result of a critical incident; and (3) recognize symptoms of psychological disorders that sometimes occur as a result of a critical incident and know how to obtain prompt evaluation and treatment of any such disorder, if necessary. FRA anticipates that implementation of this final rule would yield benefits by reducing long-term healthcare costs associated with treating PTSD, ASD, and other stress reactions; and costs that accrue either when an employee is unable to return to work for a significant period of time or might leave railroad employment due to being affected by PTSD, ASD, or other stress reactions. In addition, safety risk posed by having a person who has just been involved in a critical incident performing safety critical functions is also reduced. The majority of the quantifiable benefits identified by FRA's analysis are associated with railroad employee retention and a reduction of long-term healthcare costs associated with PTSD cases that were not treated appropriately after a critical incident. FRA expects that this final rule would decrease the number of employees who leave the railroad industry due to PTSD, ASD, or other stress reactions, as early treatment for such conditions following exposure to a critical incident would reduce the likelihood of developing the conditions. In addition, if a railroad employee involved in a critical incident did develop PTSD, ASD, or other stress reaction despite the initial relief afforded by a railroad's critical incident stress plan, FRA expects that this final rule would decrease the duration of the condition as the chances for early identification of the condition would be increased and more immediate healthcare would be provided to the affected individuals. FRA estimates that the present value of the quantifiable benefits for a 20-year period would total $2,630,000. Using a 7 percent and a 3 percent discount rate, the total discounted benefits would be $1,505,622 and $2,023,548, respectively. Overall, FRA finds that the value of the anticipated benefits would justify the cost of implementing the final rule.

II. Overview of Critical Incidents and Critical Incident Stress Plans

A. Statutory Mandate and Authority To Conduct This Rulemaking

On October 16, 2008, Congress enacted the RSIA. Section 410 of the RSIA (Section 410) mandates that the Secretary of Transportation (Secretary) require ''each Class I railroad carrier, each intercity passenger railroad carrier, and each commuter railroad carrier to develop and submit for approval to the Secretary a critical incident stress plan that provides for debriefing, counseling, guidance, and other appropriate support services to be offered to an employee affected by a critical incident.'' *See* Section 410(a). Section 410 mandates that the plans include provisions for relieving employees who are involved

in, or who witness, critical incidents from their tours of duty, and for providing leave for such employees from their normal duties as may be necessary and reasonable to receive preventive services and treatment related to the critical incident. *See* Section 410(b). Section 410 specifically requires the Secretary to define the term ''critical incident'' for purposes of this rulemaking. *See* Section 410(c). The Secretary has delegated his responsibilities under the RSIA to the Administrator of FRA. *See* 49 CFR 1.89(b). In the Section-by-Section Analysis below, FRA discusses how the regulatory text addresses each portion of the Section 410 mandates. This final rule is also issued pursuant to FRA's general rulemaking authority at 49 U.S.C. 20103.

As required by Section 410(a), FRA consulted with the Department of Health and Human Services (HHS) and the Department of Labor (DOL) in preparing this final rule. Specifically, in addition to consulting with representatives of HHS and DOL, FRA provided those departments with an advance copy of the proposed regulation and requested input on FRA's approach. FRA has incorporated the suggestions provided by both HHS's Substance Abuse and Mental Health Services Administration (SAMHSA) and DOL's Wage and Hour Division.

B. Factual Background [1]

As discussed thoroughly in the NPRM, highway-rail grade crossing accidents and trespasser incidents along the railroad right-of-way are an unfortunate reality for employees in the railroad industry. Railroad work carries the risk that certain employees will be directly involved in a critical incident, often outside the control of the employees, which can lead to severe emotional and psychological distress, including PTSD and the more immediate ASD.[2] There are concerns about the impact of exposure to traumatic incidents on employees in safety-sensitive jobs, most notably engineers and conductors.

Until this rulemaking proceeding, a national, uniform approach to critical incident response in the railroad industry did not exist, with only a handful of States taking action through statutes or regulations to aid critical incident response in the railroad industry. With this final rule, FRA defines the term ''critical incident'' in the railroad setting, which if met, would trigger the requirement that appropriate support services be offered to railroad employees affected by such incidents.

PTSD and ASD can develop following any traumatic event that threatens one's personal safety or the safety of others, or causes serious physical, cognitive or emotional harm. While such disorders are most often initiated by a threat to one's life or the witnessing of brutal injury or traumatic death—in combat situations, for example, or during violent accidents or disasters—any overwhelming life experience can trigger the disorders, especially if the event is perceived as unpredictable and uncontrollable. Individuals exposed to traumatic events may experience alterations in their neurologic, endocrine, and immune systems, which have been linked to adverse changes in overall health.[3] These changes and symptoms can be ameliorated if treated appropriately, usually with psychotherapy and/or medications. However, PTSD and ASD often go undiagnosed, as few primary care providers routinely assess for it and more often than not, attribute the symptoms to less serious forms of depression, anxiety, and general emotional distress.[4]

In 2011, there were approximately 2,000 highway-rail grade crossing accidents, and almost 800 casualties to persons trespassing on railroad property (trespassers). These incidents resulted in approximately 660 fatalities and over 1,400 non-fatal injuries. Each of these incidents, as well as other traumatic events such as railroad accidents or incidents resulting in serious injury or death to railroad employees, hold potential for causing ASD, PTSD, or other health and safety-related problems, in any railroad employee who is present. Some locomotive engineers and conductors have had the misfortune of experiencing multiple potential PTSD/ASD-invoking events over the course of their careers.[5]

Exposure of railroad employees, particularly locomotive engineers and conductors, to prototypical potentially traumatic exposures is well established. Incursion events, such as vehicular accidents at highway-rail grade crossings and pedestrian incursions onto the railroad right-of-way (frequently as a method of suicide) often involve fatalities and the injuries sustained may be gruesome. Locomotive engineers and conductors, because of their proximity to the accident scene, must often tend to the injured and secure the scene, compounding the extent and the duration of exposure. In particular, locomotive engineers may be alone in the cab when an on-the-track accident occurs. Further, train crews are required to report the incident, secure the train, and often leave the train and examine the victims. Crew members may even provide first aid if victims are alive, and wait, sometimes for long periods, for assistance or instructions.

Systematic empirical studies of the health impact on railroad personnel of this kind of experience are limited. The best designed studies have been European and show clinically diagnosed PTSD in 7 to 14 percent of those exposed. FRA has found no empirical studies of treatment efficacy and impact within the U.S. railroad population, presumably due to the relatively small population annually treated and the different locations and systems involved in railroad employees' identification and care.

If left untreated, mental health conditions carry significant costs for employers in the form of

[1] Much of this background information and review of the literature is derived from the independent final report prepared by FRA grantee, Dr. Richard Gist, in support of Grant FR–RRD–0024–11–01, titled, ''Proposed Key Elements of Critical Incident Intervention Program For Reducing the Effects of Potentially Traumatic Exposure On Train Crews to Grade Crossing and Trespasser Incidents.'' *See* Docket No. FRA–2008–0131. Articles cited in this final rule are available for viewing at FRA upon request.

[2] ASD is ''a mental disorder that can occur in the first month following a trauma. The symptoms that define ASD overlap with those for PTSD.'' ASD can lead to PTSD, but does not always. A ''PTSD diagnosis cannot be given until symptoms have lasted for one month.'' U.S. Department of Veterans Affairs, National Center for PTSD, available at *http://www.ptsd.va.gov/public/pages/acute-stress-disorder.asp* (last accessed September 18, 2013).

[3] In a study of 830 train drivers in Norway, the 48 percent of participants who had experienced at least one on-the-track accident reported considerably more health problems than those who reported no such exposure. Their symptoms included musculoskeletal, gastrointestinal, and sleep pattern issues and continued from the incident to the time of the study (for some participants up to ten years). This study also revealed that the more pronounced initial reactions to on-the-track accidents, the more severe and persistent were the health complaints post-exposure. Vatshelle, A. & Moen, B. E. (1996). Serious on-the-track accidents experienced by train drivers: Psychological reactions and long-term health effects. *Journal of Psychosomatic Research,* 42(1), 43–52. *See also* Wignall, E. L., Dickson, J. M., Vaughan, P., Farrow, T. F. D., Wilkinson, I. D., Hunter, M. D., & Woodruff, P. W. R. (2004). Smaller hippocampal volume in patients with recent-onset posttraumatic stress disorder. *Biological Psychiatry,* 56(11), 832–836.

[4] Gerrity M. S., Corson, K., & Dobscha S. K. (2007). Screening for posttraumatic stress disorder in Veterans' Affairs primary care patients with depression symptoms. *Journal of General Internal Medicine,* 22(9), 1321–1324.

[5] The Associated Press, Fatal Collisions Traumatize Nation's Train Engineers, August 14, 2009. Saed Hindash, *The Star-Ledger.* Death by Train. June 18, 2009. *http://www.nj.com/insidejersey/index.ssf/2009/06/death_by_train.html* (''Over a 40-year career, the average engineer will be involved in five to seven incidents, says Darcy, who has had seven fatalities.'').

''presenteeism,'' when employees come to work, but have lowered productivity.[6] Presenteeism can have catastrophic safety consequences for railroads. Symptoms such as sleep difficulties, trouble concentrating, hypervigilance and exaggerated sensory reactions—often leading sufferers to misuse alcohol to reduce the stress—compromise workers' safety at work and the safety of others, and lower employees' productivity on the job. One study revealed that employees are more likely to engage in workplace presenteeism than calling in sick (absenteeism).[7]

All major railroads have plans to provide their employees with assistance and intervention following traumatic events. Most of these programs have been in existence for a number of years, usually as part of a railroad's ''Employee Assistance Program'' (EAP). The descriptions of interventions, timing, and delivery in these programs are often ''transplanted'' from programs created for fire, rescue, and emergency services personnel in the 1980s and 1990s. These approaches, particularly those built around ''critical incident stress debriefing'' and related interventions, have come under increasing scrutiny as independent research has reported such interventions to not be helpful in certain situations and even to paradoxically inhibit the natural recovery of certain vulnerable participants. Accordingly, most authoritative guidelines now caution against the routine application of these approaches, particularly those built around ''critical incident stress debriefing,'' and some now list them as directly contraindicated.

While there are variations among railroads' existing programs, there are also substantial similarities reflected with respect to critical elements mandated by statute.[8] For example, many railroads provide assistance and intervention following critical incidents, often through the use of the railroad's EAP. The majority of existing plans allow for immediate relief from duty upon request for the remainder of the tour of duty, as well as transportation to the home terminal for affected employees. Finally, many plans allow for additional leave following the tour of duty upon request, often involving contact with occupational medicine or EAP representatives.[9] Therefore, several of these common elements are incorporated into this final rule.

III. Overview of the RSAC

In March 1996, FRA established RSAC, which provides a forum for developing consensus recommendations to the Administrator of FRA on rulemakings and other safety program issues. 61 FR 9740 (Mar. 11, 1996). RSAC's charter under the Federal Advisory Committee Act (Public Law 92–463) was most recently renewed in 2012. 77 FR 28421 (May 14, 2012).

RSAC includes representation from all of FRA's major stakeholders, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. An alphabetical list of RSAC members includes the following:

AAR;
American Association of Private Railroad Car Owners (AAPRCO);
American Association of State Highway and Transportation Officials (AASHTO);
American Chemistry Council (ACC);
American Petroleum Institute (API);
American Public Transportation Association (APTA);
American Short Line and Regional Railroad Association (ASLRRA);
American Train Dispatchers Association (ATDA);
Association of Railway Museums (ARM);
Association of State Rail Safety Managers (ASRSM);
Brotherhood of Locomotive Engineers and Trainmen (BLET);
Brotherhood of Maintenance of Way Employes Division (BMWED);
Brotherhood of Railroad Signalmen (BRS);
The Chlorine Institute, Inc.;
Federal Transit Administration (FTA);*
The Fertilizer Institute;
High Speed Ground Transportation Association;
Institute of Makers of Explosives;
International Association of Machinists and Aerospace Workers;
International Brotherhood of Electrical Workers (IBEW);
Labor Council for Latin American Advancement;*
League of Railway Industry Women;*
National Association of Railroad Passengers;
National Association of Railway Business Women;*
National Conference of Firemen & Oilers;
National Railroad Passenger Corporation (Amtrak);
National Railroad Construction and Maintenance Association (NRCMA);
National Transportation Safety Board (NTSB);*
Railway Passenger Car Alliance;
Railway Supply Institute;
Safe Travel America;
Secretaria de Comunicaciones y Transporte;*
Sheet Metal Workers International Association;
Tourist Railway Association Inc.;
Transport Canada;*
Transport Workers Union of America;
Transportation Communications International Union/BRC (TCIU);
Transportation Security Administration (TSA); and
United Transportation Union (UTU).

** Indicates associate, non-voting membership.*

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If the task is accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The task force then provides that information to the working group for consideration.

If a working group comes to a unanimous consensus on recommendations for action, the proposal is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff members play an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined toward the RSAC recommendation.

However, FRA is in no way bound to follow the RSAC recommendation, and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC

[6] Kessler, R.C. (2000). Posttraumatic stress disorder: The burden to the individual and society. *Journal of Clinical Psychiatry,* 61(suppl. 5), 4–12. Kessler, R.C., & Greenberg, P.E. (2002). The economic burden of anxiety and stress disorders. In K.L. Davis, D. Charney, J.T. Coyle, & C. Nemeroff (Eds.), *Neuropsychopharmacology: The Fifth Generation of Progress.* Philadelphia: Lippincott, Williams & Wilkins. Pilette, P. C. (2005). Presenteeism and productivity: Two reasons employee assistance programs make good business cents. *Annals of the American Psychotherapy Association,* 8(1), 12–14.

[7] Caverley, N., Cunningham, J. B., & MacGregor, J. M. (2007). Sickness presenteeism, sickness absenteeism, and health following restructuring in a public service organization. *Journal of Management Studies,* 44(2), 304–319.

[8] The Association of American Railroads (AAR) provided a matrix to the RSAC Critical Incident Working Group (CIWG) summarizing key characteristics of programs as submitted by nine member railroads. Several railroads also submitted their current policies regarding critical incidents in the workplace.

[9] Unpaid, job-protected leave under the Family and Medical Leave Act (FMLA) may be available to an employee involved in a critical incident. FMLA leave may be considered where an eligible employee of a covered employer suffers a serious health condition as a result of the incident. For additional guidance on the FMLA, please contact the United States Department of Labor or visit *www.dol.gov.*

recommendation in developing the actual regulatory proposal or final rule. Any such variations are noted and explained in the rulemaking document issued by FRA. If the working group or RSAC is unable to reach consensus on recommendations for action, FRA will proceed to resolve the issue through traditional rulemaking proceedings.

IV. RSAC Critical Incident Working Group

The Critical Incident Task Force (Task Force) was formed as part of the Medical Standards Working Group, and its task statement (Task No. 09–02) was accepted by RSAC on September 10, 2009. On July 2, 2010, FRA solicited bids for a grant to assess the current knowledge of post-traumatic stress interventions and to advance evidence-based recommendations for controlling the risks associated with traumatic exposures in the railroad setting. On March 11, 2011, FRA awarded the grant to the National Fallen Firefighters Foundation. On May 20, 2011, the Task Force was reformulated into an independent working group, the Critical Incident Working Group (CIWG). Task No. 09–02 (amended to reflect the new independent working group) specified that the purpose of the CIWG is to provide advice regarding the development of implementing regulations for Critical Incident Stress Plans as required by the RSIA. The Task Force further assigned the CIWG to do the following: (1) Define what a ''critical incident'' is that requires a response; (2) review available data, literature, and standards of practice concerning critical incident programs to determine appropriate action when a railroad employee is involved in, or directly witnesses, a critical incident; (3) review any evaluation studies available for existing railroad critical incident programs; (4) describe program elements appropriate for the rail environment, including those requirements set forth in the RSIA; (5) provide an example of a suitable plan (template); and (6) assist in the preparation of a NPRM.

Throughout 2011, the CIWG met four times. At the conclusion of the last meeting, an informal task force was formed to consider the substantive agreements made by the CIWG and to draft regulatory language around those agreements for the CIWG's consideration and vote. The small task force presented the language to the full CIWG for an electronic vote on August 6, 2012. The CIWG reached a consensus on all but one item [10] and forwarded a proposal to the full RSAC on August 21, 2012. RSAC voted to approve the CIWG's recommended text on September 27, 2012 and that recommended text provided the basis for this final rule. While the CIWG did discuss developing a general template flow chart of a suitable critical incident stress plan, as recommended by the Grantee's Final Report, a specific model plan that could be adapted and adopted by railroads was not developed by the CIWG. Instead, the CIWG focused its efforts on the definition of critical incident and the program elements essential for the regulatory text.

In addition to FRA staff, the members of the CIWG include the following:

AAR, including members from BNSF Railway Company (BNSF), Canadian National Railway (CN), Canadian Pacific Railway (CP), CSX Transportation, Inc. (CSX), The Kansas City Southern Railway Company (KCS), Norfolk Southern Railway Company (NS), Northeast Illinois Regional Commuter Railroad Corporation (Metra), and Union Pacific Railroad Company (UP);

Amtrak;
APTA, including members from Greater Cleveland Regional Transit Authority; Long Island Rail Road (LIRR); MTA—Metro-North Railroad; and Southern California Regional Rail Authority (SCRRA);
ASLRRA (representing short line and regional railroads);
ATDA;
BLET;
BMWED;
BRC/TCIU;
BRS;
NRCMA; and
UTU.

Staff from DOT's John A. Volpe National Transportation Systems Center attended all of the meetings of the CIWG and contributed to the technical discussions.

FRA has greatly benefited from the open, informed exchange of information during the meetings. In developing this final rule, FRA relied heavily upon the work of the CIWG.

V. FRA's Approach to Critical Incident Stress Plans

In this final rule, FRA defines the term ''critical incident'' and lists minimum criteria that must be addressed by each railroad's critical incident stress plan. The regulatory text would allow a railroad to utilize its existing critical incident stress plan as a base, making modifications as necessary to ensure compliance with the minimum standards contained in this final rule. The final rule would provide each railroad with the opportunity to conform its critical incident stress plan's screening and intervention components to current best practices and standards for evidence-based care. This flexible, standards-based approach allows for innovation and plan modification in response to new scientific developments in this field.

VI. Discussion of Public Comments and Conclusions Regarding the Final Rule

FRA notified the public of its options to submit written comments on the NPRM and to request a public, oral hearing on the NPRM as well. No request for a public hearing was received. However, a number of interested parties submitted written comments to the docket, and FRA has considered all of these comments in preparing this final rule. Specifically, written comments were received from AAR; APTA; ATDA, BLET, BMWED, BRS, TCU, UTU–SMART (Labor); New York State Metropolitan Transportation Authority (Long Island Rail Road and Metro-North Railroad) (NYS MTA); the Southeastern Pennsylvania Transportation Authority (SEPTA); and a private citizen. FRA reviewed and analyzed each issue mentioned in the comments. The major points of the comments are addressed below, and individual points made are covered in more depth in the Section-by-Section Analysis.

A. Section 272.9, Definitions

As FRA requested in the NPRM, Labor, AAR, APTA, and NYS MTA submitted comments addressing whether FRA should include explicit language in the definition of ''critical incident'' to exclude ''near miss'' scenarios. The commenters agree that ''near miss'' scenarios did not need to be included in the definition of ''critical incident.'' Labor, NYS MTA, and APTA emphasize that while the definition need not include a single ''near miss'' scenario, railroads should retain the discretion to apply critical incident procedures to what might be classified as a ''near miss'' or other situations that are not required by the regulation to be considered critical incidents. As such, in this final rule, FRA has kept the definition of ''critical incident'' the same as that proposed in the NPRM, and notes in the Section-by-Section Analysis of the definition of critical incident below that ''near miss'' scenarios are not required to be addressed in a railroad's critical incident stress plan. FRA emphasizes, however, that railroads

[10] Consensus was not reached on the issue of whether a railroad should be required to provide labor organizations' general chairpersons (in addition to the international/national president of the labor organization) with a copy of a railroad's critical incident stress plan.

have the flexibility to determine on a case-by-case basis whether individual or multiple ''near miss'' scenarios should be considered a critical incident.

SEPTA recommends several changes to the definitions of ''critical incident'' and ''directly-involved employee'' which are discussed in detail in the Section-by-Section Analysis below. Specifically, SEPTA recommends clarifying the definition of ''critical incident'' to include ''severe burns and readily visible gross trauma'' as a type of ''similarly serious bodily injury.'' In the definition of ''directly-involved employee,'' SEPTA recommends adding language clarifying what is meant by the terms ''closely connected'' and ''in person.'' SEPTA also expresses the view that railroad police and accident investigators should not be excluded from the definition of ''directly-involved employee.''

While FRA agrees in principal with the general substance of SEPTA's comments, the agency does not believe that modifying the RSAC recommended language is necessary to address the comments. Instead, in response to SEPTA's comments FRA has included a discussion clarifying these issues in the Section-by-Section Analysis.

B. Section 272.101, Content of a Critical Incident Stress Plan

As proposed, this section would require that a railroad's critical incident stress plan (CISP) contain at least provisions for carrying out the objectives described in paragraphs (a)–(g) of the section. FRA received comments in response to proposed paragraphs (a), (e), and (f) of this section, and regarding FRA's preamble discussion of what would constitute ''appropriate support services'' in accordance with proposed paragraph (d). After careful consideration of the comments received, FRA is adopting the regulatory language of this section as proposed, with the exception of clarifying amendments to paragraphs (a) and (f). A more detailed discussion of FRA's analysis of the comments received is found in the Section-by-Section Analysis below.

C. Section 272.103, Submission of a Critical Incident Stress Plan

As proposed, § 272.103(b) requires, in part, that each railroad serve a copy of its proposed CISP (or a material modification to an existing CISP) on the international president/national president of any non-profit employee labor organization representing a class or craft of the railroad's employees covered by its CISP. As FRA requested in the NPRM, several commenters discuss this service list requirement. Consistent with the views expressed by Labor representatives during CIWG meetings, Labor disagrees with FRA's proposal to limit service of a proposed CISP to only the international/national president of the relevant Labor organizations, while AAR supports the proposed service list requirement. For the reasons discussed in more detail in the Section-by-Section Analysis below, in this final rule FRA is maintaining the proposed regulatory language requiring railroads to provide copies of proposed CISPs to the international/national president of any relevant labor organization representing a class or craft of the railroad's employees covered by its CISP.

D. Section 272.105, Option To File Critical Incident Stress Plan Electronically

As proposed, § 272.105 provided for optional electronic submission of CISPs to FRA for approval. Responding to FRA's request for comments on whether the option to file critical incident stress plans electronically should be mandatory, Labor and AAR express support for electronic submission. FRA received no comments opposing mandatory electronic submission of CISPs. Accordingly, as discussed in the Section-by-Section Analysis below, in this final rule FRA has modified the regulatory language of proposed § 272.105 to require railroads to electronically submit CISPs to FRA for approval.

E. Comments on the Economic Analysis

AAR believes that FRA may have overstated the potential benefit of the proposed rule, because much of the estimated potential benefit is attributable to reduced employee healthcare costs, and such benefit is speculative. AAR reminds FRA that railroads already have critical incident stress programs that include some or all of the elements that would be required by the proposed rule. Despite this noted concern, AAR emphasizes that it generally supports the proposed rule. APTA suggests that FRA relied on insufficient data in structuring the proposed rule. APTA notes that the rule did not use data on the U.S. railroad worker experience with PTSD or acute stress. Because FRA referred to a Norwegian railroad study and used an exposure rate that does not cover all possible incidents that would be covered by the rule in its economic estimates, APTA questions how FRA's cost analysis can be valid. APTA also expresses concern with FRA's use of sources from veterans and military institutions, as these are not comparable to the railroad business environment.

FRA noted in the preamble to the NPRM that systematic empirical studies of the impact of these events on the health of exposed railroad personnel are limited.[11] However, FRA emphasizes that the data used in its economic analysis is the best available research data.

VII. Section-by-Section Analysis

Unless noted otherwise, please refer to the extensive discussion in the NPRM, as FRA has generally adopted the rule text as proposed in the NPRM.

Subpart A—General

Subpart A of the final rule contains the general provisions of the rule, including a statement of the rule's purpose, an application section, a statement of general duty, the critical incident stress plan coverage section, a definitions section that includes the central definition of a ''critical incident,'' and a statement pertaining to penalties. As discussed further in the definitions section, § 272.9, this final rule defines a ''critical incident'' as either—(1) An accident/incident reportable to FRA under 49 CFR part 225 that results in a fatality, loss of limb, or a similarly serious bodily injury; or (2) A catastrophic accident/incident reportable to FRA under part 225 that could be reasonably expected to impair a directly-involved employee's ability to perform his or her job duties safely.

As no comments were received in response to §§ 272.1 through 272.7 and 272.11, FRA is adopting the regulatory language for these sections as proposed in the NPRM.

Section 272.9 Definitions

Section 272.9 defines a number of terms used in this part. FRA received comments regarding the proposed definitions of ''critical incident'' and ''directly-involved employee.'' After careful consideration of the comments received and for the reasons discussed generally in section VI.A above and in this Section-by-Section Analysis, in this final rule FRA is adopting both definitions as proposed in the NPRM.

In the NPRM, FRA proposed to define *critical incident* as (1) An accident/

[11] Some factors that hinder FRA's ability to determine the rates of ASD and PTSD in exposed railroad employees are: (1) Some exposed employees may be seeking care from their private mental health care practitioners and not through a railroad EAP; (2) some exposed employees who need evaluation and treatment for ASD and PTSD are not seeking it; and (3) Labor and EAP concerns about medical confidentiality may limit access to the data.

incident reportable to FRA under 49 CFR part 225 that results in a fatality, loss of limb, or a similarly serious bodily injury; or (2) A catastrophic accident/incident reportable to FRA under part 225 that could be reasonably expected to impair a directly-involved employee's ability to perform his or her job duties safely. As noted in the NPRM, this definition reflects the recommendations made by the CIWG and by further limiting the definition of ''critical incident'' to accidents/incidents that are reportable under part 225, all accidents and incidents not arising from railroad operations are excluded from the definition.

While a reportable accident/incident could cover many incidents that relate to railroad operations, as proposed and as adopted in this final rule, the definition of ''critical incident'' includes only an accident/incident that results in a fatality, loss of limb, or a similarly serious bodily injury or a catastrophic accident/incident reportable to FRA under part 225 of this chapter that could be reasonably expected to impair a directly-involved employee's ability to perform his or her job duties safely. Accordingly, minimal injuries in the railroad workplace are not included in the scope of this definition. Similarly, as explained in the analysis of the proposed definition of ''critical incident'' in the NPRM, ''near miss'' scenarios (*i.e.,* situations which when seen in hindsight could have resulted in an accident, but did not) are not included.

In its comments related to the proposed definition of ''critical incident,'' SEPTA recommends that the definition be modified to include ''severe burns and readily visible gross trauma'' as an example of a ''similarly serious bodily injury.'' Although FRA agrees with SEPTA that severe burns and readily visible gross trauma could be a ''similarly serious bodily injury,'' FRA does not believe it is necessary to revise the definition to include that specific phrase.

In the NPRM, FRA specifically requested comment as to whether the proposed definition of ''critical incident'' should contain explicit language excluding ''near miss'' scenarios. A ''near miss'' is an event, seen in hindsight, in which an accident could have occurred, but was narrowly avoided. For example, an automobile is rendered inoperable on the railroad tracks at a highway-rail grade crossing, but the automobile is able to get out of the way of the oncoming train, so that a collision is averted. In response to this request, FRA received comments from Labor, AAR, APTA, and NYS MTA.

Labor states that it ''do[es] not believe there is any need to cover a single 'near miss' scenario, like a close call at a grade crossing that did not result in a collision, since the FRA chose to point to 49 CFR part 225 to clarify what would be considered an accident/incident.'' But, Labor suggests that the rule should ''allow for consideration of multiple 'near miss' scenarios as a 'critical incident.' '' AAR comments that ''[t]he RSAC working group discussed near misses at length and concluded that the regulations should not encompass near misses.'' AAR notes that there is no evidence that individuals generally suffer significant trauma from near misses. AAR raises the issue that ''including near misses would present significant compliance and enforcement issues,'' as it would be difficult to define a ''near miss'' and it would be difficult for a railroad to know when a ''near miss'' occurs. AAR suggests that ''[w]hether in the rule text or in the preamble, FRA needs to be clear that near misses are not critical incidents.'' NYS MTA states that it ''support[s] FRA's position that the applicable science does not appear to support including 'near miss' scenarios in the rule and that 'near miss' issues should be handled by each railroad on an individual basis.'' APTA agrees, saying that it ''strongly supports FRA's intention to not include Near Miss incidents in the regulatory definition.'' At the same time, however, APTA notes that ''passenger railroads need to have the discretionary authority within their critical incident plans to apply critical incident procedures to what might be classified a near miss or otherwise fall outside of the definitions proposed in the regulation.''

As discussed thoroughly in the NPRM, while a ''near miss'' event could cause a negative stress-reaction in a train crew, research demonstrates that such reaction would typically only occur in situations where, for example, an individual had been involved in a prior similar incident which had catastrophic consequences or there were other issues at play. FRA believes that such ''near miss'' scenarios should be handled by each railroad on an individual basis, as the applicable science does not appear to support including ''near miss'' scenarios in the rule generally. Additionally, FRA agrees with AAR's comment that it would be difficult for railroads to comply with and for FRA to enforce the regulation regarding a ''near miss,'' as a railroad would not necessarily have evidence of such an occurrence. Accordingly, although FRA is not revising the definition of ''critical incident'' to specifically exclude ''near miss'' events, FRA notes that the reference to part 225 in the definition makes clear that a single ''near miss'' event would not be considered a ''critical incident'' in accordance with this rule. FRA further notes that this final rule does not prohibit a railroad from implementing a critical incident stress plan that provides flexibility for a railroad to determine on a case-by-case basis whether individual or multiple ''near miss'' scenarios should be considered a critical incident.

In the NPRM, FRA proposed to define ''directly-involved employee'' to mean a railroad employee covered under proposed § 272.7 who falls into any of three stated subcategories: (1) Whose actions are closely connected to the critical incident; (2) who witnesses the critical incident in person as it occurs or who witnesses the immediate effects of the critical incident in person; or (3) who is charged to directly intervene in, or respond to, the critical incident (excluding railroad police officers or investigators who routinely respond to and are specially trained to handle emergencies).

SEPTA comments that the phrase ''closely connected'' in subparagraph (1) of the definition is ''vague'' and ''risks subjective interpretations.'' SEPTA recommends replacing the term ''closely connected'' with ''include an immediate presence at the covered critical incident or whose contemporaneous, co-incidental participation contributed to the incident—limited to train and engine personnel; control and dispatch personnel; and employees who inspect, install, repair, or maintain the involved right-of-way, structures, rolling-stock, and communications and signals apparatus.''

FRA finds that SEPTA's proposed modification would be unwieldy if included in the regulatory text. Additionally, the language that SEPTA recommends (''limited to train and engine personnel; control and dispatch personnel; and employees who inspect, install, repair, or maintain the involved right-of-way, structures, rolling-stock, and communications and signals apparatus'') is unnecessary. This recommended limitation encompasses the ''covered'' employees listed under § 272.7, and such persons are already the types of railroad employees included in the definition of ''directly-involved employee.'' In response to SEPTA's comment, FRA notes that an employee ''closely connected'' to a critical incident is intended to mean an employee whose actions directly contribute to the incident (those actions

could be merely the actions of carrying out the individual's job functions, e.g., by operating a train), or whose contemporaneous actions (or inaction) directly contribute to the incident. An example of when an employee may be ''closely connected'' to a critical incident, even though he or she is not at the incident scene and witnessing the incident in person, is a situation where an act or omission by that employee (such as a train dispatcher) causes or contributes to a critical incident (e.g., a dispatcher authorizes a movement in error which results in a collision).

The second subcategory is an employee covered under § 272.7 who ''witnesses the critical incident in person as it occurs or who witnesses the immediate effects of the critical incident in person.'' As noted in the preamble to the NPRM, this could include an employee who is working alongside the track when a highway-rail grade crossing collision occurs, and either sees the incident happen or comes upon the casualties of the incident. SEPTA comments that ''the term 'in person' is too vague and could include a witness who views the occurrence from afar or remotely via a live video feed.'' SEPTA recommends that FRA modify the text to say: ''who was present on-site or immediately proximal to the critical incident locale and observed the immediate prelude, actual incident, and/or immediate effects therefrom.'' SEPTA asserts that its suggested revision ''may also minimize possible exploitation of the regulation's provision[s]'' for relief from duty for directly-involved employees.

FRA does not intend the term ''in person'' to mean a witness who views the occurrence from afar or remotely via a live video feed. As explicitly explained in the NPRM preamble, the phrase ''witnesses . . . in person'' is intended to exclude employees who only hear about the accident/incident (such as over the radio) and are not otherwise directly involved in the accident/incident. *See* 78 FR 38885. The phrase ''in person'' was recommended by the CIWG small task force. FRA believes that the task force's language is clear and that as a matter of plain English, the term ''in person'' is commonly understood to mean that an individual is ''actually present.'' Accordingly, FRA declines to adopt SEPTA's proposed modification in the regulatory text. However, FRA reiterates that ''in person'' is intended to encompass persons who were present on-site or immediately proximal to the critical incident locale and observed the immediate prelude, actual incident, and/or immediate effects therefrom.

The third subcategory would include an employee covered under § 272.7 who is charged to directly intervene in, or respond to, the highway-rail grade crossing accident/incident, such as craft and supervisory employees who are called out to the scene. Consistent with the intent of the CIWG, the proposed language specifically excluded ''railroad police officers or investigators who routinely respond to and are specially trained to handle emergencies.'' During the RSAC process, members of the CIWG specifically indicated that the rule should not cover railroad police officers and railroad investigators who routinely respond to such incidents and are specially trained to handle such emergency matters.

As discussed above, SEPTA comments that ''[t]he term 'specially trained' excludes railroad police and accident investigators from the provisions set forth in the critical stress regulation based on an assumption that this population is immune to the subject stressors.'' SEPTA recommends that FRA ''include both railroad police as well as accident investigators.'' Contrary to SEPTA's statement, however, FRA did not assume that railroad police and accident investigators were ''immune to the subject stressors.'' Rather, this exclusion was based on a practical concern. It would be unworkable if specially-trained personnel were to respond to a critical incident, but then seek immediate relief while on the job responding to the type of accident for which they are trained and required to respond. Consistent with the recommendations of the CIWG, FRA believes that such specially-trained response personnel should receive assistance and resources to help them cope with and handle such stressors, specifically tailored to their unique positions. FRA finds that this rule would not necessarily apply to such persons appropriately. However, FRA notes that nothing in this rule prohibits a railroad from applying its critical incident stress plan more broadly than what is required in this regulation to include railroad police and accident investigators as it sees fit.

Subpart B—Plan Components and Approval Process

This subpart contains the basic components of the critical incident stress plan required by this rule and the elements of the approval process. This rule affords railroads considerable discretion in the administration of their critical incident stress plans.

Section 272.101 Content of a Critical Incident Stress Plan

As discussed in section VI.B above, FRA is adopting the regulatory text for this section as proposed, with the exception of clarifying amendments to § 272.101(a) and (f).

As noted in the preamble to the NPRM, the objective of this regulation is to allow each railroad to utilize its existing critical incident stress plan as a base, making modifications as necessary to ensure compliance with minimum standards, and to enhance conformity of the plan's screening and intervention components to current best practices and standards for evidence-based care. A railroad's CISP should document that the railroad has taken sufficient steps to establish how each element of the plan can be satisfactorily executed in covered critical incidents.

Section 272.101 requires that a railroad's critical incident stress plan contain at least provisions for carrying out the objectives described in paragraphs (a)–(g) of the section. Among these designated objectives are allowing a directly-involved employee to obtain relief from the remainder of the tour of duty, providing for the directly-involved employee's transportation to the home terminal (if applicable), and offering a directly-involved employee appropriate support services following a critical incident. The specific details of each plan may vary, but the plans must be consistent with this section.

As proposed by paragraph (a) of the section, a railroad's CISP must provide for ''[i]nforming each directly-involved employee as soon as practicable of the stress relief options that he or she may request[.]'' AAR comments that it prefers the RSAC text (''an employee must be informed as soon as practicable that the employee may request relief''), asserting that it ''does not understand what FRA means by the reference to ''stress relief options.'' FRA declines to revert to the exact RSAC text in the final rule, but FRA does note that this provision means that a directly-involved employee needs to be reminded of the relief options available to him or her after a critical incident (i.e., that the employee may request relief from the remainder of the duty tour, may be provided transportation to the employee's home terminal, may receive relief from the duty tour(s) subsequent to the critical incident, and may seek additional relief as necessary and reasonable to receive preventive services or treatment) as soon as practicable following a critical incident. Although all employees covered under § 272.7 should already be cognizant of

the opportunity to request relief following a critical incident, directly-involved employees must be reminded of their options for relief as soon as it is practicable after the occurrence of a critical incident. FRA's intent with this provision is to emphasize that an employee's opportunity for relief from service must be effectively communicated to covered employees. Of course, if a covered employee has been seriously injured and has already been relieved from duty for the remainder of the tour, it is not necessary to notify the employee of the opportunity to be relieved.

FRA intended that the meaning of this provision, as modified, was to remain the same as the RSAC recommended text (that an employee must be informed as soon as practicable that the employee may request relief from the remainder of the duty tour, may be provided transportation to the employee's home terminal, may receive relief from the duty tour(s) subsequent to the critical incident, and may seek additional relief as necessary and reasonable to receive preventive services or treatment). However, FRA was concerned that the language as recommended by RSAC, ''informing each directly-involved employee as soon as practicable that he or she may request relief,'' was too vague. As a result, in the NPRM, FRA proposed the regulatory text to state ''informing each directly-involved employee as soon as practical of the stress relief options that he or she may request.'' To further clarify the intention of this provision and in response to AAR's request for clarification, FRA is modifying the rule text in § 272.101(a) to require that a railroad's CISP contain a provision ''informing each directly-involved employee as soon as practicable of the relief options available in accordance with the railroad's critical incident stress plan.''

FRA recommends that a typical plan specify an appropriate time to notify affected employees of the option to seek relief, such as, ''employees must be notified at the incident site of their opportunity to be relieved.'' This reminder of the option to seek relief must be made during the early communications between the employee and the dispatcher and/or railroad management, before the employee has already continued on with his or her tour of duty or much time has elapsed.

As proposed, paragraph (d) of the section would require that a railroad's CISP must provide for ''offering counseling, guidance, and other appropriate support services to each directly-involved employee.'' FRA received several general comments with respect to the NPRM's preamble discussion of ''appropriate support services'' in this context. A private citizen, Ms. Jill Simons, comments that ''EAP availability should be mandatory in light of [traumatic] events, not just in the railroad industry but across all industries.'' She believes that ''[s]upervisors should receive training to recognize when an employee is suffering from [PTSD] and be able to recommend or refer that employee to a company sponsored [sic] EAP.''

FRA appreciates Ms. Simons' comments. First, FRA notes that it does not regulate other industries, thus it cannot mandate EAP availability across all industries. This regulation puts into place requirements that help to prevent ASD, PTSD, and other psychiatric disorders (e.g., depression) following a critical incident related to railroad operations. FRA requires that a railroad's CISP include provision of counseling, guidance, and other appropriate support services be offered to each directly-involved employee. A railroad may utilize an EAP to satisfy that requirement. FRA agrees with Ms. Simons' comments about training. As FRA noted in the NPRM, to implement a CISP, all relevant railroad employees, from managers at headquarters to employees at the local level, must be made aware of the railroad's plan and the specific requirements of the plan and must be trained on how to implement the requirements of the plan relevant to the employee. *See* 78 FR 38878, 38888. FRA intends that any training requirements, including the training of supervisors and other management officials responsible for implementing the plans, will be covered by FRA's proposed new training regulation. *See* 77 FR 6412 (Feb. 7, 2012). FRA expects all railroad plans to provide for training on how a supervisor or other railroad employee should interact with an employee who is directly-involved in a critical incident, and training about what every directly-involved employee should do following a critical incident.

To clarify, FRA does not expect a railroad supervisor or manager to be trained in diagnosing PTSD. PTSD is a clinical diagnosis. As such, the presence or absence of signs and symptoms of PTSD should be assessed and diagnosed only by licensed clinical mental health practitioners (i.e., psychiatrists, clinical psychologists, and licensed clinical social workers). FRA notes that supervisors and other non-mental health professionals responsible for implementing a railroad's CISP may benefit from training in ''Psychological First Aid.'' Psychological First Aid is a recommended non-clinical technique that railroads and trained lay people can utilize to provide directly-involved employees ''situational knowledge'' that would help these employees gain ready access to counseling, guidance, and other required support services, and reduce the initial psychological distress that employees involved in a critical incident may experience. In addition, FRA understands that providing ''pre-incident'' education and training to employees who may become directly-involved in a critical incident is an essential element of a CISP because it helps to protect the employee from psychological and emotional harm should a critical incident occur. Pre-incident education and training for employees should be structured to provide employees information about normal reactions to stress, ways to cope with stress, and options for leave, counseling, and other support services.

Both SEPTA and APTA express concern with FRA's discussion in the NPRM preamble regarding the specific intervention element of ''critical stress debriefing.'' As a point of clarification, FRA understands that the term ''debriefing'' is sometimes used to mean different things. For example, the term ''debriefing'' may be used within the railroad community to mean a process of non-confrontational dialogue that is initiated after a railroad accident/incident by the railroad or investigators to elicit facts or statements from employees directly-involved in an accident/incident. The purpose of such fact-finding debriefings is to identify and analyze factors that may have contributed to the occurrence of an accident/incident and determine potential remedies that can be implemented to prevent the same accident/incident from happening again. Nothing in this part should be construed to prohibit such fact-finding debriefings. FRA also understands that the term ''debriefing'' is sometimes used in a very different way, to mean ''critical incident stress debriefing'' (CISD). CISD is a facilitator-led group process intended to support normal recovery processes and the restoration of adaptive functions in psychologically healthy people who are distressed after experiencing a traumatic event such as a critical incident. In addition, participants can be screened during the process to identify participants who need additional support services or referral for treatment. Generally, each participant is encouraged to describe what he or she experienced at the time of the accident/incident and in its aftermath. In addition to describing

what happened during a critical incident from his or her own perspective, each participant is encouraged to describe his or her personal thoughts and reactions to the incident; and any cognitive, physical, emotional, or behavioral symptoms the participant has experienced since the event. CISD participants are then presented information to help them understand normal stress reactions, their symptoms, things that they can do to cope with stress, and follow-up.[12] FRA noted in the preamble to the NPRM that the ''specific intervention element of 'critical stress debriefing' in the scientific literature is contraindicated, as it has not been shown to be effective and may actually be harmful in some instances.'' 78 FR 38886–38887. Examples of hypothetical explanations for findings that ''critical incident stress debriefings'' may cause harm in some instances include: (1) group participants have different levels of distress, symptoms, and vulnerability to ASD and PTSD, and may be further distressed by hearing each of the other participants describe their experience; (2) some participants may feel stigmatized by having more severe psychological and emotional reactions and symptoms than their peers; (3) some participants may, in certain instances, be rejected by certain participants in the group for expressing their feelings; and (4) some participants who were not traumatized by the incident may react negatively to ''critical incident stress debriefing.'' [13] FRA concluded that a specific element of ''critical [incident] stress debriefing'' would not be an ''appropriate support service.'' Accordingly, FRA indicated that the agency would not approve a CISP containing a specific program element of ''critical [incident] stress debriefing.'' *Id.* at 38887. ''Psychological First Aid'' (PFA), in contrast to ''critical incident stress debriefing,'' is a flexible, evidence-informed intervention which is tailored to the individual who has experienced a traumatic event. PFA emphasizes a nonintrusive and compassionate approach to providing an individual who has experienced a critical incident practical assistance with immediate needs, safety and comfort, and assistance in establishing connections with primary support networks and social resources, as well as information about common reactions to trauma, ways to cope with stress, follow-up, and how to access additional support services, including treatment (if needed). PFA does not encourage or require individuals to express their experience, including their emotional reactions and symptoms, to peers in a group setting. The goals of PFA are to decrease the initial distress associated with exposure to a traumatic event and to improve adaptive functioning.[14] FRA notes that, in contrast to CISD, research has shown PFA to be effective in reducing the initial psychological distress that may normally occur in individuals who have experienced a traumatic event. It has not been shown to cause harm.

Both SEPTA and APTA express concern with FRA's expressed position in the NPRM pertaining to CISD. SEPTA states that the CISD technique ''was never intended to be standalone treatment, but does have efficacy as a form of 'psychological first aid.'" Further, SEPTA explains that ''the [CISD] technique may be effective when applied to the correct population by a properly trained practitioner'' and that it is a technique ''best applied to police, firefighters, and emergency medical personnel.'' While SEPTA agrees that CISD can be less effective and potentially harmful under certain circumstances, SEPTA argues that the technique ''should not be banned as a component of a railroad's plan.'' APTA states that ''[s]everal passenger railroads currently use CISD with positive results'' and consistent with SEPTA's comment, asserts that FRA should not ''summarily dismiss this treatment option without a more thorough review of its application in the railroad environment.''

Additionally, in response to FRA's request for input on the NPRM, SAMHSA expressed agreement with FRA's proposal to limit or phase out ''debriefings'' and instead utilize ''psychological first aid and other evidence informed approaches for assisting survivors of disasters or tragic incidences.'' SAMHSA further commented, however, that the agency ''has learned that there are recent findings where the debriefing model is evolving and appears to be headed in the right direction'' and that ''the debriefing model is still regarded as relevant among both the law enforcement and fire fighter cultures.''

FRA acknowledges that CISD has been used as an intervention for law enforcement, firefighter, and emergency medical personnel who have experienced traumatic events. However, as noted in the preamble to the NPRM, research studies have *not* clearly demonstrated that CISD is effective in preventing ASD or PTSD, and studies have shown that it may be harmful in certain instances. *See* 78 FR at 38886–87. Accordingly, because CISD has not been demonstrated as effective in preventing ASD or PTSD and may actually cause harm in certain instances, FRA cannot conclude that CISD is an ''appropriate support service'' to be included as a specific element of a railroad's CISP. Further, in contrast to CISD, PFA does not encourage or require individuals to express their experience, including their emotional reactions and symptoms, to peers in a group setting. As such, FRA does not believe that ''psychological first aid'' has the same meaning as either ''debriefing'' or ''critical incident stress debriefing.'' For these reasons, if a railroad's plan proposes to utilize CISD as a specific intervention element for the purposes of this part, FRA will not approve the plan.

FRA notes that ''psychological first aid'' has been shown to be effective in reducing the initial psychological distress that may normally occur in individuals who have experienced a traumatic event. It has not been shown to cause harm. The provision of PFA as a specific intervention element of a critical incident stress plan is strongly recommended. FRA recommends PFA be utilized by trained supervisors and EAP counselors and other mental health providers when responding to a critical incident to provide directly-involved employees information that is specified in a railroad's FRA-approved CISP, including: information about the availability of timely options for relief and transportation to the employee's home terminal; the availability of counseling, guidance, and other appropriate support services; options for relief from the duty tour(s) subsequent to the critical incident; and options for additional leave from normal duty.

Under proposed paragraph (e) of the section and as adopted in this final rule, a railroad's CISP would be required to ''permit[ ] relief from the duty tour(s)

[12] *See* Mitchell, J. T., Critical incident stress debriefing (CISD) (2008) (Retrieved from *http://www.info-trauma.org/flash/media-e/mitchellCriticalIncidentStressDebriefing.pdf* on January 23, 2014); Mitchell J.T., Everly G.S. Jr., Critical Incident Stress Debriefing: An Operations Manual for CISD, Defusing and Other Group Crisis Intervention Services, 3rd ed., Chevron Publishing Corporation (2001); Mitchell J.T., Everly G.S., Critical Incident Stress Debriefing: (CISD)., Chevron Publishing Co (1993); Mitchell, J. T., When disaster strikes: the critical incident stress debriefing process. *Journal of Emergency Medical Services,* 8, 36–39 (1983).

[13] *See* Briere J., Can you give our staff some guidance on the appropriate use of critical incident stress debriefing and psychological first aid?, *Psychiatric Times,* (2006) (Retrieved from *http://www.psychiatrictimes.com/printpdf/162160*).

[14] *See* National Child Traumatic Stress Network and National Center for PTSD. Psychological First Aid: Field Operations Guide, 2nd ed. Los Angeles, CA: National Child Traumatic Stress Network; 2006.

subsequent to the critical incident, for an amount of time to be determined by each railroad.'' As noted in the preamble to the NPRM, the language proposed was modified from the RSAC-approved language to include the qualifying phrase ''for an amount of time to be determined by each railroad . . . as may be necessary and reasonable'' in order to add context and clarity to the requirement. A few commenters express disagreement with the proposed language, while others support the modified language as proposed. First, Labor disagrees with FRA's contention that the modification ''adds clarity,'' and suggests that ''FRA should follow the example of the plans that are out there today and stipulate 'three days.' '' Labor argues that ''railroads should not be allowed to continue to make a unilateral decision to deny any time off for an employee involved with a critical incident.'' NYS MTA recommends that the language be revised back to the RSAC language. SEPTA recommends adding additional qualifying language to the paragraph requiring that the employee requesting relief be availing him or herself to the ''pro-offered EAP counseling, guidance, and support services.'' APTA, on the other hand, expresses support for the language proposed by FRA because it ''strengthens the intent of the coping period as caring for the employee in each situation is different and tasks the railroad to make the determination rather than trying to make it a regulatory requirement.''

FRA intends this provision to require that railroads' CISPs address how much additional time off an employee affected by a critical incident may receive and as Labor comments, FRA is attempting to guide the railroads to select an appropriate amount of time in their individual plans that an employee can request additional time off in order to cope with the critical incident. As FRA noted in the preamble to the NPRM, many railroads currently offer employees involved in critical incidents relief from the immediate tour of duty along with transportation to the employee's home terminal, then provide up to three days off along with consultation with an EAP, if any, and/or occupational medicine staff. This provides directly-involved employees with an opportunity, away from the railroad environment, to cope with having experienced a critical incident. This is an amount of time to be determined by each railroad to allow for a reasonable amount of rest and time following a critical incident (without necessitating a clinical diagnosis). Because the particular amount of time off in this context is not necessarily tied to any particular scientific evidence, FRA believes the regulatory requirement should be neutral on the amount of additional time a railroad should permit beyond the tour of duty during which the critical incident occurred. FRA believes the specific time period for this coping period is an issue better resolved by each railroad on a case-by-case basis and should not be mandated by FRA. Accordingly, FRA has not modified the regulatory text in § 272.101(e) from the NPRM. FRA notes, however, that it expects that most railroads would simply use the three-day period that has been common practice in the industry. The three-day period may comport well with duty schedules and provide a sufficient coping period for many employees involved in a critical incident.

FRA also appreciates SEPTA's recommendation that FRA add the phrase to § 272.101(e), ''so long as the requestor is availing themselves of pro-offered EAP counseling, guidance, and support services.'' FRA expects that all employees who are relieved from a tour of duty following a critical incident are put into contact with an EAP. Thus, while FRA does not agree that a clinical diagnosis should be required for additional leave to be granted for time to ''cope'' with what happened, EAP counseling, guidance, and support services should be employed during this process to ensure that an employee's needs are addressed appropriately.

As proposed, paragraph (f) of this section would require a railroad's CISP to provide for permitting employees directly-involved in a critical incident additional leave from duty ''as may be necessary and reasonable to receive preventative services or treatment related to the incident, or both.'' Commenters generally express support for this provision, noting that most existing railroad CISPs provide for such additional time off. However, noting that many passenger railroads' existing CISPs permit leave in addition to the duty tour(s) subsequent to the critical incident (covered by paragraph (e) of the section) if a clinical diagnosis supports the need for additional time off, both NYS MTA and APTA recommend that FRA modify this paragraph to make clear that an employee's request for additional time off must be supported by a clinical diagnosis. Specifically, APTA recommends that the paragraph be revised to reflect industry practice by requiring a clinical diagnosis and treatment plan be established as a basis for an employee's continued leave from duty tours subsequent to the critical incident (i.e., subsequent to the ''coping period''). Further, NYS MTA notes that ''FRA's analysis of the economic impact [of the rule] may be underestimating the costs if the regulation allows additional time off beyond the 'coping period' without a clinical diagnosis.'' The proposed language is consistent with the language of Section 410, as well as the RSAC recommended language. However, in light of commenters concerns and to clarify the intention of this provision, FRA is modifying paragraph (f) to require a railroad's CISP to include a provision ''[p]ermitting each directly-involved employee such additional leave from normal duty as may be necessary and reasonable to receive preventive services or treatment related to the incident or both, provided the employee is in consultation with a health care professional.'' In this manner, FRA expects that additional leave requested, beyond the coping period specified in § 272.101(e), would be supported by a clinical diagnosis, or would be granted in consultation with a health care professional (e.g., in instances where affected individuals are seeking care from a health care professional, but for practical reasons do not yet have a clinical diagnosis or are receiving preventive services from a health care professional).

Section 272.103 Submission of Critical Incident Stress Plan for Approval by FRA

As proposed, § 272.103 requires a railroad to submit its CISP to FRA for approval, and in accordance with paragraph (b) provide a copy of its CISP and any material modifications to the international/national president of any non-profit employee labor organization representing a class or craft of the railroad's employees subject to this rule. As FRA requested in the NPRM, several commenters discuss the service list requirement of paragraph (b). Consistent with the views expressed by Labor representatives during CIWG meetings, Labor disagrees with FRA's proposal to limit service of a proposed CISP to only the international/national president of the relevant Labor organizations. Instead, Labor reiterates the views it expressed during the RSAC working group meetings, stating that because ''general chairpersons are the designated collective bargaining representatives with day-to-day responsibility for direct interaction with railroad management and the union membership'' and because each CISP is an ''on-property program unique to each railroad,'' railroads should be required to provide a copy of a proposed CISP (or material modification to a CISP) to each general

chairperson. Moreover, Labor asserts that such a requirement would not be burdensome on the railroads as they already communicate with those individuals nearly daily.

In contrast, noting that there are well over 40 general chairpersons on some railroads, AAR supports FRA's proposed rule text because ''labor presidents are perfectly capable of circulating proposed plans to those in their organizations.'' AAR asserts that ''[r]equiring service on general chairs would result in service lists with large numbers of people, which might lead to a railroad inadvertently not serving a general chair.'' NYS MTA notes that the process outlined in proposed § 272.103(b) is ''consistent with notification requirements used for FRA's conductor certification and minimum training standards regulations.'' APTA similarly comments that it ''sees no advantage in providing wide circulation of the plan and supports only involving the labor organization representatives maintained on the service lists used by each railroad.''

While FRA understands Labor's position, FRA's requirement in § 272.103(b) was intended to be consistent with other proposed and final FRA regulations, such as the NPRM on training standards (77 FR 6412, Feb. 7, 2012) and the final rule on conductor certification (76 FR 69802, Nov. 9, 2011). If FRA required service to general chairpersons as well, such a large mandatory service list could pose a potential compliance problem for the railroads. FRA notes that the designated points of contact on the service lists in existence for collective bargaining purposes may be used so long as that service list conforms to the requirement in the rule that requires the railroad to serve the ''international/national president of any non-profit employee labor organization representing a class or craft of the railroad's employees subject to this part.'' Of course, FRA would not take exception if a railroad and labor organization agreed to include additional persons on this service list.

AAR, NYS MTA, and APTA also note that FRA requested comment on whether FRA should require that railroad management consult with railroad employees on the formation of critical incident programs, as is required for system safety plans by the RSIA. Noting that railroads already have critical incident stress plans in place with which Labor is already familiar, all three commenters express the view that adding such a consultation requirement would be unnecessary and undesirable. Although FRA appreciates these comments, FRA notes that in the NPRM the agency was seeking comments on the issue of the service list, not on a consultation requirement. FRA was attempting to explain that while the System Safety Program NPRM required a service list that included general chairpersons, that regulation also required consultation (as mandated by the RSIA). The RSIA did not require consultation for the critical incident regulation nor is FRA including such a requirement in this final rule.

The final rule contemplates that railroads may submit existing critical incident stress plans to FRA for approval that have previously been established through any applicable collective bargaining agreement. However, in order to satisfy the eventual final rule, any preexisting critical incident stress plan would have to contain all prescribed elements of the plan as set forth in the regulation, and such a plan would have to be submitted to FRA pursuant to this section for review. Thus, FRA would approve critical incident stress plans previously vetted through the collective bargaining agreement process, provided that those plans meet the criteria specified in the final regulation. FRA's regulation constitutes a minimum standard and would not negate any higher standards set by a collective bargaining agreement.

As no comments were received regarding § 272.103(a), (c), (d), (e), (f), or (g), FRA has adopted the regulatory language for each of those paragraphs as proposed.

Section 272.105 Requirement To File Critical Incident Stress Plan Electronically

As proposed, § 272.105 provided for optional electronic submission of CISPs to FRA for approval. Responding to FRA's request for comments on whether the option to file CISPs electronically should be mandatory, both Labor and AAR express support for electronic submission. AAR further comments that because critical incident stress plans would not contain confidential information, FRA's proposed electronic submission process is ''overly complicat[ed].'' In response to these comments, in this final rule, FRA is mandating that railroads submit CISPs electronically to the agency. FRA is also simplifying the requirements for electronic submission, as AAR recommends, because the agency agrees that the electronic submission process proposed in the NPRM was unnecessarily complex.

Paragraph (a) of § 272.105 as adopted in this final rule requires railroads to submit CISPs to FRA electronically using a Web link on FRA's Safety Data Web site (*http://safetydata.fra.dot.gov/OfficeofSafety/CISP*). The Web link is easily accessible by all railroads and will not require railroads to maintain a username and password, which would have been necessary under the secure document Web site proposed in the NPRM. When submitting a CISP or a material modification of a CISP through the Web link, a railroad will be prompted to complete certain required fields containing the information outlined in § 272.105(b) (including email addresses for two points of contact at the railroad) and to upload its CISP (or the corresponding document reflecting any material modification(s) to an existing approved CISP). FRA expects that railroads will upload the necessary documents in commercial off-the-shelf software formats (e.g., Microsoft Word or Adobe PDF). The Web link will allow for easy submission and validation that key information is provided. FRA will notify the railroad's point of contacts via the email addresses provided of the agency's approval of a CISP (or material modification of an existing approved CISP) or the need to resubmit the document in the event FRA cannot approve the document as initially submitted.

FRA received no comments in opposition to mandatory electronic submission. Accordingly, in this final rule, FRA is making electronic submission of CISPs to FRA mandatory. FRA believes that electronic submission will allow FRA to review submissions more efficiently and eliminate the need to store hardcopies of the numerous submissions.

Appendix A to Part 272—Schedule of Civil Penalties

As no comments were received regarding this section, FRA has adopted the regulatory language as proposed.

VIII. Regulatory Impact and Notices

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

This rule has been evaluated in accordance with existing policies and procedures and determined to be non-significant under both Executive Orders 12866 and 13563 and DOT policies and procedures. *See* 44 FR 11034, February 26, 1979. FRA has prepared and placed in the docket a Regulatory Evaluation addressing the economic impact of this rule. As part of the Regulatory Evaluation, FRA has assessed the quantitative costs and benefits from the implementation of this rule.

The purpose of the rule is to enhance safety by mandating that certain railroads (each Class I railroad, intercity passenger railroad, and commuter railroad) have a critical incident stress plan intended to mitigate the long-term negative effects of critical incidents upon railroad employees. Specifically the rule would help ensure that every railroad employee covered by the rule who works for these railroads and who is affected by a critical incident can receive the support services needed.

The Railroad Safety Advisory Committee (RSAC) formed a working group to provide advice and recommendations on the regulatory matters involving critical incident stress plans.[15] Based on both RSAC meetings and discussions with the rail industry, FRA's analysis in the Regulatory Evaluation assumes that all railroads affected by the rule currently have policies that include a critical incident stress plan, thereby reducing the costs of compliance associated with the rule.

FRA's analysis follows DOT's revised ''Guidance on the Economic Value of a Statistical Life in US Department of Transportation Analyses,'' published in March 2013. Based on real wage growth forecasts from the Congressional Budget Office, DOT's guidance estimates that there will be an expected 1.07 percent annual growth rate in median real wages over the next 20 years (2014–2034) and assuming an income elasticity of 1.0 adjusts the Value of Statistical Life (VSL) in future years in the same way. Real wages represent the purchasing power of nominal wages. VSL is the basis for valuing avoided casualties. FRA's analysis further accounts for expected wage growth by adjusting the taxable wage component of labor costs. Other non-labor hour based costs and benefits are not impacted. FRA estimates that the costs of the rule for a 20-year period would total $1.9 million, with a present value (PV, 7%) of $1.3 million and (PV, 3%) of $1.6 million. In estimating these compliance costs, FRA included costs associated with training supervisors on how to interact with railroad employees who have been affected by a critical incident, additional costs associated with greater use of Employee Assistance Programs, and costs associated with the submission of critical incident stress plans to FRA. FRA also estimates that the quantifiable benefits of the rule for a 20-year period would total $2.6 million, with a present value (PV, 7%) of $1.5 million and (PV, 3%) of $2.0 million. FRA is confident that potential benefits of the rule would exceed the total costs.

TABLE 1—20-YEAR COSTS FOR RULEMAKING

	Present value (7 percent)	Present value (3 percent)
Training	$1,135,685	$1,342,391
Submission of Critical Incident Stress Plans for approval by FRA	114,266	153,415
EAP Specialist	87,879	119,713
Total	1,337,830	1,615,519

The Regulatory Evaluation also explains the likely benefits of this rule, providing quantified estimates of the benefits where feasible. The rule contains minimum standards for leave, counseling, and other support services. These standards would help create benefits by providing employees with knowledge, coping skills, and services that would help them: (1) Recognize and cope with symptoms of normal stress reactions that commonly occur as a result of a critical incident; (2) reduce their chance of developing a disorder such as depression, PTSD, or ASD as a result of a critical incident; and (3) recognize symptoms of psychological disorders that sometimes occur as a result of a critical incident and know how to obtain prompt evaluation and treatment of any such disorder, if necessary.

Specifically, FRA anticipates that implementation of the rule would yield benefits by reducing long-term healthcare costs associated with treating PTSD, ASD, and other stress reactions; and costs that accrue either when an employee is unable to return to work for a significant period of time or might leave railroad employment due to being affected by PTSD, ASD, or other stress reactions.

The majority of the quantifiable benefits identified are associated with railroad employee retention and a reduction of long-term healthcare costs associated with PTSD cases that were not treated appropriately after a critical incident. FRA estimates that one-half of one percent of railroad employees who develop PTSD exit the railroad industry. According to this estimate, one railroad employee would leave the railroad industry due to PTSD every ten years. If an employee is unable to return to work, the railroad not only loses an experienced employee, but also must train a new employee. FRA expects that the rule would decrease the number of new employees that have to be trained to backfill for those who leave the railroad industry due to PTSD, ASD, or other stress reactions, as early treatment for potential PTSD cases following exposure to a critical incident by reducing both the likelihood of developing and the duration of PTSD or other stress reactions. The rule would also increase the early identification and treatment of PTSD thus reducing long-term healthcare costs. Overall, FRA finds that the value of the anticipated benefits would justify the cost of implementing the rule.

TABLE 2—20-YEAR BENEFITS FOR RULEMAKING

	Present value (7 percent)	Present value (3 percent)
Reduction in Long-term Healthcare Costs	$1,445,288	$1,953,784
Retention of Employees (reduced backfilling costs)	60,334	69,764

[15] This RSAC working group reached consensus on all items but one: whether a railroad should be required to provide its critical incident stress plan to the general chairperson of a labor organization, in addition to the organization's international/national president.

TABLE 2—20-YEAR BENEFITS FOR RULEMAKING—Continued

	Present value (7 percent)	Present value (3 percent)
Total	1,505,622	2,023,548

B. Regulatory Flexibility Act and Executive Order 13272

To ensure potential impacts of rules on small entities are properly considered, FRA has developed this final rule in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.).

The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities. An agency must prepare a regulatory flexibility analysis (RFA) unless it determines and certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities.

This final rule will enhance safety by mandating that railroads have a critical incident stress plan that may help mitigate the long-term negative effects of critical incidents upon covered railroad employees. One of the most important assets to the railroad industry is its labor force. The railroads spend significant resources training their workforces. Although all of the railroads potentially affected by the rule have policies that include critical incident stress plans, the rule will promote implementation as intended to every applicable employee covered by critical incident stress plan and also ensure that all such plans meet certain minimum Federal requirements.

(1) Description of Regulated Entities and Impacts: The ''universe'' of the entities to be considered generally includes only those small entities that are reasonably expected to be directly regulated by this action. This final rule directly affects Class I, intercity passenger, and commuter railroads as defined in the final rule.

''Small entity'' is defined in 5 U.S.C. 601. Section 601(3) defines a ''small entity'' as having the same meaning as ''small business concern'' under section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4) likewise includes within the definition of this term not-for-profit enterprises that are independently owned and operated, and are not dominant in their field of operation. The U.S. Small Business Administration (SBA) stipulates in its size standards that the largest a railroad business firm that is ''for profit'' may be and still be classified as a ''small entity'' is 1,500 employees for ''Line Haul Operating Railroads'' and 500 employees for ''Switching and Terminal Establishments.'' Additionally, 5 U.S.C. 601(5) defines as ''small entities'' governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final statement of agency policy that formally establishes ''small entities'' or ''small businesses'' as being railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is $20 million or less in inflation-adjusted annual revenues; and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. *See* 68 FR 24891, May 9, 2003, codified at appendix C to 49 CFR part 209. The $20 million-limit is based on the Surface Transportation Board's revenue threshold for a Class III railroad. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1. FRA is using this definition for this rulemaking.

Railroads: Based on the railroad reporting data from 2011, there are 719 Class III railroads. Due to the applicability of the rule, however, none of these railroads would be impacted. The railroad reporting data also shows that there are 30 intercity passenger and commuter railroads.[16] Although two of these railroads are considered small entities, they do not fall within the rule's definition of a ''commuter railroad,'' which means a railroad, as described by 49 U.S.C. 20102(2), including public authorities operating passenger train service, that provides regularly-scheduled passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979. Therefore FRA finds that there are 28 intercity passenger and commuter railroads that will incur additional costs by the rule. However, the affected commuter railroads are part of larger public transportation agencies that receive Federal funds and serve major jurisdictions with populations greater than 50,000.

As FRA believes that no small entities will be affected by this rule, there would also be no cost impacts on small businesses. Railroads operated entirely by contract operators such that the contractor organization itself meets the definition of a commuter railroad, class I, or inter-city passenger railroad, would be subject to this rule. In these circumstances, FRA assumes that the contract operator would utilize the critical incident stress plan developed by the reporting railroad. FRA will hold the reporting railroads responsible for defects or deficiency, not the contracted operators. Therefore, FRA does not expect that the rule will directly impact any contractors that are considered to be large or small entities.

During the public comment period following the NPRM, FRA did not receive any comments discussing the initial regulatory flexibility analysis or Executive Order 13272. FRA certifies that the final rule will not have any significant economic impact on the competitive position of small entities, or on the small entity segment of the railroad industry as a whole.

(2) Certification: Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), FRA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. As all of the affected commuter railroads are part of larger public transportation agencies that receive Federal funds and serve major jurisdictions with populations greater than 50,000; based on the definition, therefore, they are not considered small entities.

C. Executive Order 13175

FRA analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments'').

[16] This total includes the Alaska Railroad, which is categorized as a Class II railroad.

Because this rule does not significantly or uniquely affect tribes and does not impose substantial and direct compliance costs on Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

D. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
272.103				
—RR Submission of Updated/Modified Existing Critical Incident Stress Plan.	34 Railroads	34 modified plans	16 hours	544
—RR Copies of Updated Critical Incident Stress Plans to 5 Employee Labor Organizations.	34 Railroads	170 plan copies	5 minutes	14
—Rail Labor Organization Comments to FRA on RR Critical Incident Stress Plan.	5 Labor Organizations	65 comments	3 hours	195
—Rail Labor Organization Affirmative Statement to FRA that Comment Copy has been served on Railroad.	5 Labor Organizations	65 certifications	15 minutes	16
—Copy to RR Employees of Updated/Modified Critical Incident Stress Plans.	169,500 Employees	169,500 copies	5 minutes	14,125
—Copy to FRA Inspector Upon Request of Critical Incident Stress Plan.	34 Railroads	136 plan copies	5 minutes	11
272.105—Electronic Filing/Submission of Critical Incident Stress Plan to FRA.	34 Railroads	34 requests	5 minutes	3

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, at 202–493–6292, or Ms. Kimberly Toone at 202–493–6137.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Kimberly Toone, Federal Railroad Administration, 1200 New Jersey Avenue SE., 3rd Floor, Washington, DC 20590. Comments may also be submitted via email to Mr. Brogan or Ms. Toone at the following address: *Robert.Brogan@dot.gov; Kim.Toone@dot.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

E. Environmental Impact

FRA has evaluated this final rule in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this action is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28547, May 26, 1999. In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this final rule that might trigger the need for a more detailed environmental review. As a result, FRA finds that this final rule is not a major Federal action significantly affecting the quality of the human environment.

F. Federalism Implications

Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local

officials in the process of developing the regulation.

FRA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132. If adopted, this final rule would not have a substantial direct effect on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. FRA has also determined that this final rule would not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Moreover, FRA notes that RSAC, which endorsed and recommended the majority of this final rule, has as permanent members, two organizations representing State and local interests: AASHTO and ASRSM. Both of these State organizations concurred with the RSAC recommendation made in this rulemaking. RSAC regularly provides recommendations to the Administrator of FRA for solutions to regulatory issues that reflect significant input from its State members. To date, FRA has received no indication of concerns about the federalism implications of this rulemaking from these representatives or from any other representatives of State government.

However, this final rule could have preemptive effect by operation of law under 49 U.S.C. 20106 (Section 20106). Section 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the ''local safety or security hazard'' exception to Section 20106.

In sum, FRA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this final rule has no federalism implications, other than the possible preemption of State laws under Section 20106. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this final rule is not required.

G. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) [currently $151,000,000] in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. This final rule will not result in the expenditure, in the aggregate, of $151,000,000 or more in any one year, and thus preparation of such a statement is not required.

H. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' *See* 66 FR 28355 (May 22, 2001). Under the Executive Order a ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this final rule in accordance with Executive Order 13211. FRA has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this final rule is not a ''significant energy action'' within the meaning of the Executive Order.

I. Privacy Act Statement

FRA wishes to inform all interested parties that anyone is able to search the electronic form of any written communications and comments received into any agency docket by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www/regulations.gov/#!privacyNotice* for the privacy notice of *regulations.gov* or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

List of Subjects in 49 CFR Part 272

Accidents, Critical incident, Penalties, Railroads, Railroad employees, Railroad safety, Safety, and Transportation.

The Final Rule

■ For the reasons discussed in the preamble, FRA amends chapter II, subtitle B of Title 49 of the Code of Federal Regulations by adding a new part 272 to read as follows:

PART 272—CRITICAL INCIDENT STRESS PLANS

Subpart A—General

Sec.
272.1 Purpose.
272.3 Application.
272.5 General duty.
272.7 Coverage of a critical incident stress plan.
272.9 Definitions.
272.11 Penalties.

Subpart B—Plan Components and Approval Process

272.101 Content of a critical incident stress plan.
272.103 Submission of critical incident stress plan for approval by the Federal Railroad Administration.
272.105 Requirement to file critical incident stress plan electronically.
Appendix A to Part 272—Schedule of Civil Penalties

Authority: 49 U.S.C. 20103, 20107, 20109, note; 28 U.S.C. 2461, note; 49 CFR 1.89; and sec. 410, Div. A, Pub. L. 110–432, 122 Stat. 4888.

Subpart A—General

§ 272.1 Purpose.

(a) The purpose of this part is to promote the safety of railroad operations and the health and safety of railroad employees, especially those who are directly involved in a critical incident by requiring that the employing railroad offers and provides appropriate support services, including appropriate relief, to the directly-involved employees following that critical incident.

(b) Nothing in this part constrains a railroad from implementing a critical incident stress plan that contains additional provisions beyond those specified in this part (including provisions covering additional incidents

or persons), provided that such additional provisions are not inconsistent with this part.

§ 272.3 Application.

This part applies to each

(a) Class I railroad, including the National Railroad Passenger Corporation;

(b) Intercity passenger railroad; or

(c) Commuter railroad.

§ 272.5 General duty.

A railroad subject to this part shall adopt a written critical incident stress plan approved by the Federal Railroad Administration under § 272.103 and shall comply with that plan. Should a railroad subject to this part make a material modification to the approved plan, the railroad shall adopt the modified plan approved by the Federal Railroad Administration under § 272.103 and shall comply with that plan, as revised.

§ 272.7 Coverage of a critical incident stress plan.

The critical incident stress plan of a railroad subject to this part shall state that it covers, and shall cover, the following individuals employed by the railroad if they are directly involved (as defined in § 272.9) in a critical incident:

(a) Railroad employees who are subject to the hours of service laws at—

(1) 49 U.S.C. 21103 (that is, train employees not subject to subpart F of part 228 of this chapter regarding the hours of service of train employees engaged in commuter or intercity rail passenger transportation);

(2) 49 U.S.C. 21104 (signal employees); or

(3) 49 U.S.C. 21105 (dispatching service employees);

(b) Railroad employees who are subject to the hours of service regulations at subpart F of part 228 of this chapter (regarding the hours of service of train employees engaged in commuter or intercity rail passenger transportation);

(c) Railroad employees who inspect, install, repair, or maintain railroad right-of-way or structures; and

(d) Railroad employees who inspect, repair, or maintain locomotives, passenger cars, or freight cars.

§ 272.9 Definitions.

As used in this part—

Accident/incident has the meaning assigned to that term by part 225 of this chapter.

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

Associate Administrator means the Associate Administrator for Railroad Safety and Chief Safety Officer of the Federal Railroad Administration or that person's delegate.

Class I has the meaning assigned to that term by the regulations of the Surface Transportation Board (49 CFR part 1201; General Instructions 1–1).

Commuter railroad means a railroad, as described by 49 U.S.C. 20102(2), including public authorities operating passenger train service, that provides regularly-scheduled passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979.

Critical incident means either—

(1) An accident/incident reportable to FRA under part 225 of this chapter that results in a fatality, loss of limb, or a similarly serious bodily injury; or

(2) A catastrophic accident/incident reportable to FRA under part 225 of this chapter that could be reasonably expected to impair a directly-involved employee's ability to perform his or her job duties safely.

Directly-involved employee means a railroad employee covered under § 272.7—

(1) Whose actions are closely connected to the critical incident;

(2) Who witnesses the critical incident in person as it occurs or who witnesses the immediate effects of the critical incident in person; or

(3) Who is charged to directly intervene in, or respond to, the critical incident (excluding railroad police officers or investigators who routinely respond to and are specially trained to handle emergencies).

FRA means the Federal Railroad Administration, 1200 New Jersey Ave. SE., Washington, DC 20590.

Home terminal means an employee's regular reporting point at the beginning of the tour of duty.

Intercity passenger railroad means a railroad, as described by 49 U.S.C. 20102(2), including public authorities operating passenger train service, which provides regularly-scheduled passenger service between large cities.

§ 272.11 Penalties.

(a) *Civil penalties.* A person who violates any requirement of this part, or causes the violation of any such requirement, is subject to a civil penalty of at least $650 and not more than $25,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $105,000 per violation may be assessed. Each day that a violation continues is a separate offense. *See* Appendix A to part 209 of this chapter for a statement of agency civil penalty policy.

(b) *Criminal penalties.* A person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311.

Subpart B—Plan Components and Approval Process

§ 272.101 Content of a critical incident stress plan.

Each critical incident stress plan under this part shall include, at a minimum, provisions for—

(a) Informing each directly-involved employee as soon as practicable of the relief options available in accordance with the railroad's critical incident stress plan;

(b) Offering timely relief from the balance of the duty tour for each directly-involved employee, after the employee has performed any actions necessary for the safety of persons and contemporaneous documentation of the incident;

(c) Offering timely transportation to each directly-involved employee's home terminal, if necessary;

(d) Offering counseling, guidance, and other appropriate support services to each directly-involved employee;

(e) Permitting relief from the duty tour(s) subsequent to the critical incident, for an amount of time to be determined by each railroad, if requested by a directly-involved employee as may be necessary and reasonable;

(f) Permitting each directly-involved employee such additional leave from normal duty as may be necessary and reasonable to receive preventive services or treatment related to the incident or both, provided the employee's clinical diagnosis supports the need for additional time off or the employee is in consultation with a health care professional related to the incident and such health care professional supports the need for additional time off in order for the employee to receive preventive services or treatment related to the incident, or both; and

(g) Addressing how the railroad's employees operating or otherwise working on track owned by or operated over by a different railroad will be afforded the protections of the plan.

§ 272.103 Submission of critical incident stress plan for approval by the Federal Railroad Administration.

(a) Each railroad subject to this part shall submit to the Federal Railroad Administration, Office of Railroad Safety, 1200 New Jersey Avenue SE, Washington, DC 20590, for approval, the railroad's critical incident stress plan no later than 12 months after June 23, 2014.

(b) Each railroad subject to this part shall—

(1) Simultaneously with its filing with FRA, serve, either by hard copy or electronically, a copy of the submission filed pursuant to paragraph (a) of this section or a material modification filed pursuant to paragraph (e) of this section on the international/national president of any non-profit employee labor organization representing a class or craft of the railroad's employees subject to this part; and

(2) Include in its submission filed pursuant to paragraph (a) of this section or a material modification filed pursuant to paragraph (e) of this section a statement affirming that the railroad has complied with the requirements of paragraph (b)(1) of this section, together with a list of the names and addresses of the persons served.

(c) Not later than 90 days after the date of filing a submission pursuant to paragraph (a) of this section or a material modification pursuant to paragraph (e) of this section, a labor organization representing a class or craft of the railroad's employees subject to this part, may file a comment on the submission or material modification.

(1) Each comment shall be submitted to the Associate Administrator for Railroad Safety and Chief Safety Officer, FRA, 1200 New Jersey Avenue SE, Washington, DC 20590; and

(2) The commenter shall certify that a copy of the comment was served on the railroad.

(d) A critical incident stress plan is considered approved for purposes of this part if and when FRA notifies the railroad in writing that the critical incident stress plan is approved, or 120 days after FRA has received the railroad's critical incident stress plan, whichever occurs first.

(e) After FRA's initial approval of a railroad's critical incident stress plan, if the railroad makes a material modification of the critical incident stress plan, the railroad shall submit to FRA for approval a copy of the critical incident stress plan as it has been revised to reflect the material modification within 30 days of making the material modification.

(f) Upon FRA approval of a railroad's critical incident stress plan and any material modification of the critical incident stress plan, the railroad must make a copy of the railroad's plan and the material modification available to the railroad's employees identified in § 272.7.

(g) Each railroad subject to this part must make a copy of the railroad's plan available for inspection and reproduction by the FRA.

§ 272.105 Requirement to file critical incident stress plan electronically.

(a) Each railroad subject to this part must submit its critical incident stress plan and any material modifications to that plan electronically through FRA's Web site at http://safetydata.fra.dot.gov/OfficeofSafety/CISP.

(b) The railroad's electronic submission shall provide the Associate Administrator with the following:

(1) The name of the railroad;

(2) The names of two individuals, including job titles, who will be the railroad's points of contact;

(3) The mailing addresses for the railroad's points of contact;

(4) The railroad's system or main headquarters address located in the United States;

(5) The email addresses for the railroad's points of contact;

(6) The daytime telephone numbers for the railroad's points of contact; and

(7) An electronic copy of the railroad's critical incident stress plan or any material modifications to that plan being submitted for FRA approval.

(c) FRA may electronically store any materials required by this part.

Appendix A to Part 272—Schedule of Civil Penalties [1]

SUBPART B—PLAN COMPONENTS AND APPROVAL PROCESS

Section	Violation	Willful violation [1]
272.101 Content of a critical incident stress plan:		
(a) Failure to inform about relief options	5,000	6,000
(b) Failure to offer timely relief from duty tour	5,000	10,000
(c) Failure to offer timely transportation to home terminal	5,000	10,000
(d) Failure to offer counseling, guidance, support services	5,000	10,000
(e) Failure to permit relief from duty tour(s) subsequent to incident	5,000	10,000
(f) Failure to permit additional leave to receive preventive services or treatment related to the incident	5,000	10,000
272.103 Submission of critical incident stress plan for approval by the Federal Railroad Administration.		
(a) Failure to submit a plan to FRA	9,000	18,000
(b) Failure to simultaneously file a copy	5,000	10,000
(e) Failure to submit a material modification to the plan	7,500	15,000
(f) Failure to make a copy of the plan available to covered employees	3,000	6,000
(g) Failure to make a copy of the plan available to FRA	3,000	6,000

Issued in Washington, DC, on March 17, 2014.

Karen J. Hedlund,

Deputy Administrator.

[FR Doc. 2014–06481 Filed 3–24–14; 8:45 am]

BILLING CODE 4910–06–P

[1] A civil penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $105,000 for any violation where circumstances warrant. *See* 49 U.S.C. 21301, 21304 and 49 CFR part 209, Appendix A.

Proposed Rules

Federal Register
Vol. 79, No. 57
Tuesday, March 25, 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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1260

[No. AMS–LPS–13–0079]

Beef Promotion and Research; Reapportionment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would adjust representation on the Cattlemen's Beef Promotion and Research Board (Board), established under the Beef Promotion and Research Act of 1985 (Act), to reflect changes in cattle inventories as well as cattle and beef imports that have occurred since the most recent Board reapportionment rule became effective in July 2011. These adjustments are required by the Beef Promotion and Research Order (Order) and would result in a decrease in Board membership from 103 to 99, effective with the U.S. Department of Agriculture's (USDA) appointments for terms beginning early in the year 2015. The proposed rule also would make technical amendments to update and correct information in the Order and regulations.

DATES: Written comments must be received by April 24, 2014.

ADDRESSES: Interested persons are invited to submit written comments on the Internet at *www.regulations.gov* or to Angie Snyder; Research and Promotion Division; Livestock, Poultry and Seed Program; Agricultural Marketing Service, USDA, Room 2092–S, STOP 0249, 1400 Independence Avenue SW., Washington, DC 20250–0249; or fax to (202) 720–1125. All comments should reference the docket number, the date, and the page number of this issue of the **Federal Register** and will be available for public inspection at the above office during regular business hours.

Please be advised that all comments submitted in response to this proposed rule will be included in the record and will be made available to the public on the Internet at *http://www.regulations.gov.* Also, the identity of the individuals or entities submitting the comments will be made public.

FOR FURTHER INFORMATION CONTACT: Angie Snyder, Research and Promotion Division, on 202/720–5705, fax 202/720–1125, or by email at *angie.snyder@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action has been designated as a ''non-significant regulatory action'' under § 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has waived the review process.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

Section 11 of the Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

Executive Order 13175

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

Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic effect of this action on small entities and has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

In the February 2013 publication of ''Farms, Land in Farms, and Livestock Operations,'' USDA's National Agricultural Statistics Service (NASS) estimates that the number of operations in the United States with cattle in 2012 totaled approximately 915,000, down from 950,000 in 2009. The majority of these operations that are subject to the Order may be classified as small entities. There are approximately 25 importers who import beef or edible beef products into the United States and 297 importers who import live cattle into the United States. It is estimated that the majority of these operations subject to the Order are considered small businesses under the criteria established by the Small Business Administration (SBA) [13 CFR 121.201]. SBA defines small agricultural service firms as those having annual receipts of $7.0 million or less, and small agricultural producers are defined as those having annual receipts of less than $750,000.

The proposed rule imposes no new burden on the industry. It only adjusts representation on the Board to reflect changes in domestic cattle inventory, as well as cattle and beef imports. The adjustments are required by the Order and would result in a decrease in Board membership from 103 to 99.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements imposed under part 1260 were previously approved under OMB control number 0581–0093.

Background and Proposed Action

The Board was initially appointed August 4, 1986, pursuant to the provisions of the Act (7 U.S.C. 2901–

2911) and the Order issued thereunder. Domestic representation on the Board is based on cattle inventory numbers, and importer representation is based on the conversion of the volume of imported cattle, beef, or beef products into live animal equivalencies.

Reapportionment

Section 1260.141(b) of the Order provides that the Board shall be composed of cattle producers and importers appointed by the Secretary of Agriculture from nominations submitted by certified producer and importer organizations. A producer may only be nominated to represent the State or unit in which that producer is a resident.

Section 1260.141(c) of the Order provides that at least every 3 years and not more than every 2 years, the Board shall review the geographic distribution of cattle inventories throughout the United States and the volume of imported cattle, beef, and beef products and, if warranted, shall reapportion units and/or modify the number of Board members from units in order to reflect the geographic distribution of cattle production volume in the United States and the volume of cattle, beef, or beef products imported into the United States.

Section 1260.141(d) of the Order authorizes the Board to recommend to the Department modifications to the number of cattle per unit necessary for representation on the Board.

Section 1260.141(e)(1) provides that each geographic unit or State that includes a total cattle inventory equal to or greater than 500,000 head of cattle shall be entitled to one representative on the Board. Section 1260.141(e)(2) provides that States that do not have total cattle inventories equal to or greater than 500,000 head shall be grouped, to the extent practicable, into geographically-contiguous units, each of which have a combined total inventory of not less than 500,000 head. Such grouped units are entitled to at least one representative on the Board. Each unit that has an additional 1 million head of cattle within a unit qualifies for additional representation on the Board as provided in § 1260.141(e)(4). As provided in § 1260.141(e)(3), importers are represented by a single unit, with the number of Board members based on a conversion of the total volume of imported cattle, beef, or beef products into live animal equivalencies.

The initial Board appointed in 1986 was composed of 113 members. Reapportionment, based on a 3-year average of cattle inventory numbers and import data, reduced the Board to 111 members in 1990 and 107 members in 1993 before the Board was increased to 111 members in 1996. The Board was decreased to 110 members in 1999, 108 members in 2001, and 104 members in 2005; increased to 106 members in 2009; and decreased to 103 members in 2011. This proposal would amend § 1260.141(a) by decreasing the number of Board members from 103 to 99 with appointments for terms effective early in 2015.

The current Board representation by States or units was based on an average of the January 1, 2008, 2009, and 2010 inventory of cattle in the various States as reported by NASS. Current importer representation was based on a combined total average of the 2007, 2008, and 2009 live cattle imports as published by USDA's Foreign Agricultural Service and the average of the 2007, 2008, and 2009 live animal equivalents for imported beef products.

In considering reapportionment, the Board reviewed cattle inventories for the period of January 1, 2011, 2012, and 2013 as well as cattle, beef, and beef product import data for the period of January 1, 2010, to January 1, 2012. The Board recommended that a 3-year average of cattle inventories and import numbers should be continued. The Board determined that an average of the January 1, 2011, 2012, and 2013 cattle inventory numbers would best reflect the number of cattle in each State or unit since publication of the last reapportionment rule published in 2011 (76 FR 42012). The Board reviewed data published by the USDA's Economic Research Service to determine proper importer representation. The Board recommended the use of a combined total of the average of the 2010, 2011, and 2012 cattle import data and the average of the 2010, 2011, and 2012 live animal equivalents for imported beef products. The method used to calculate the total number of live animal equivalents was the same as that used in the previous reapportionment of the Board. The live animal equivalent weight was changed in 2006 from 509 pounds to 592 pounds (71 FR 47074).

The Board's recommended reapportionment plan would decrease the number of representatives on the Board from 103 to 99. From the Board's analysis of USDA cattle inventories and import equivalencies, New Mexico would lose one Board seat and Texas would lose two Board seats. The importers would lose one Board seat.

The States and units affected by the reapportionment plan and the current and proposed member representation per unit are as follows:

State/Unit	Current representation	Revised representation
New Mexico	2	1
Texas	14	12
Importers	7	6

The Board reapportionment as proposed by this rulemaking would be effective, if adopted, with appointments that will be effective early in the year 2015.

Technical Amendments

A number of technical amendments are being proposed to update or correct information contained in the provisions of the Order and regulations. These include:

Section 1260.129 references the U.S. Customs Service of the U.S. Department of the Treasury. The language would be updated to reflect the updated agency and department.

Section 1260.312(4)(c) would be amended to update an outdated address.

Section 1260.316 would be updated to reflect the correct OMB paperwork reduction number.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate to facilitate the adjustment of the representation on the Board, which is required by the Order at least every 3 years, and not more than every 2 years and to allow for the annual nomination and appointment process for the Board appointments that will be effective early in the year 2015.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreement, Meat and meat products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, it is proposed that 7 CFR part 1260 be amended as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

■ 1. The authority citation for 7 CFR part 1260 continues to read as follows:

Authority: 7 U.S.C. 2901–2911 and 7 U.S.C. 7401.

■ 2. Revise § 1260.129 to read as follows:

§ 1260.129 Customs Service.

Customs Service means the United States Customs and Border Protection of the United States Department of Homeland Security.

■ 3. In § 1260.141, paragraph (a) is revised to read as follows:

§ 1260.141 Membership of Board.

(a) Beginning with the 2014 Board nominations and the associated appointments effective early in the year 2015, the United States shall be divided into 37 geographical units and, 1 unit representing importers, for a total of 38 units. The number of Board members from each unit shall be as follows:

CATTLE AND CALVES [1]

State/Unit	(1,000 Head)	Directors
1. Arizona	897	1
2. Arkansas	1,663	2
3. Colorado	2,667	3
4. Florida	1,667	2
5. Idaho	2,270	2
6. Illinois	1,097	1
7. Indiana	840	1
8. Iowa	3,883	4
9. Kansas	6,083	6
10. Kentucky	2,193	2
11. Louisiana	787	1
12. Michigan	1,107	1
13. Minnesota	2,377	2
14. Mississippi	920	1
15. Missouri	3,833	4
16. Montana	2,533	3
17. Nebraska	6,317	6
18. New Mexico	1,423	1
19. New York	1,403	1
20. North Carolina	810	1
21. North Dakota	1,727	2
22. Ohio	1,247	1
23. Oklahoma	4,600	5
24. Oregon	1,303	1
25. Pennsylvania	1,610	2
26. South Dakota	3,733	4
27. Tennessee	1,930	2
28. Texas	12,167	12
29. Utah	790	1
30. Virginia	1,547	2
31. Wisconsin	3,433	3
32. Wyoming	1,317	1
33. Northwest:	.....	1
Alaska	13	.....
Hawaii	138	.....
Washington	1,117	.....
Total	1,267	.....
34. Northeast	.....	1
Connecticut	49	.....
Delaware	18	.....
Maine	87	.....
Massachusetts	40	.....
New Hampshire	34	.....
New Jersey	31	.....
Rhode Island	5	.....
Vermont	267	.....
Total	531	.....
35. Mid-Atlantic:	.....	1
Maryland	196	.....
West Virginia	390	.....
Total	586	.....
36. Southeast:	.....	3
Alabama	1,220	.....
Georgia	1,023	.....
South Carolina	370	.....
Total	2,613	.....
37. Southwest:	.....	6
California	5,283	.....
Nevada	463	.....
Total	5,747	.....
38. Importer [2]	5,927	6

[1] 2011, 2012, and 2013 average of January 1 cattle inventory data.

[2] 2010, 2011, and 2012 average of annual import data.

* * * * *

■ 4. In § 1260.312, paragraph (c) is revised to read as follows:

§ 1260.312 Remittance to the Cattlemen's Board or Qualified State Beef Council.

* * * * *

(c) *Remittances.* The remitting person shall remit all assessments to the qualified State beef council or its designee, or, if there is no qualified State beef council, to the Cattlemen's Board at P.O. Box 803834, Kansas City, MO 64180–3834, with the report required in paragraph (a) of this section not later than the 15th day of the following month. All remittances sent to a qualified State beef council or the Cattlemen's Board by the remitting persons shall be by check or money order payable to the order of the qualified State beef council or the Cattlemen's Board. All remittances shall be received subject to collection and payment at par.

■ 5. Section 1260.316 is revised to read as follows:

§ 1260.316 Paperwork Reduction Act assigned number.

The information collection and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0581–0093.

Dated: March 6, 2014.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2014–06174 Filed 3–24–14; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 810

RIN 1994–AA02

Assistance to Foreign Atomic Energy Activities

AGENCY: National Nuclear Security Administration (NNSA), Department of Energy (DOE).

ACTION: Notice of re-opening of the comment period.

SUMMARY: On August 2, 2013, DOE published a supplemental notice of proposed rulemaking (SNOPR) concerning its regulations governing Assistance to Foreign Atomic Energy Activities. The comment period on the SNOPR was originally to close on October 31, 2013, but was extended until November 30, 2013. By this notice, DOE is re-opening the comment period on the SNOPR. The comment period will close on April 2, 2014. The re-opening of the comment period will provide for additional time for the public to review and comment on the proposed regulation and other comments received. The Department looks forward to hearing feedback from the public on the proposed regulations.

DATES: The supplemental notice of proposed rulemaking published August 2, 2013 (78 FR 46829), is reopened. DOE will accept written comments submitted electronically or postmarked on or before April 2, 2014.

ADDRESSES: Interested persons may submit comments on the SNOPR, identified by RIN 1994–AA02, by any of the following methods:

1. *Federal Rulemaking Portal: http://www.regulations.gov/#!docketDetail;D=DOE-HQ-2011-0035* . Follow the instructions for submitting comments.

2. *Email: Part810.SNOPR@hq.doe.gov.* Include RIN 1994–AA02 in the subject line of the message.

3. *Mail:* Richard Goorevich, Senior Policy Advisor, Office of Nonproliferation and International Security, NA–24, National Nuclear Security Administration, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, DOE

encourages responders to submit comments electronically to ensure timely receipt.

All submissions must include the RIN for this rulemaking, RIN 1994–AA02. For additional information and instructions on submitting comments, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of the SNOPR.

FOR FURTHER INFORMATION CONTACT: Richard Goorevich, Senior Policy Advisor, Office of Nonproliferation and International Security, NA–24, National Nuclear Security Administration, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone 202–586–0589; Janet Barsy, Office of the General Counsel, GC–53, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone 202–586–3429; or Katie Strangis, National Nuclear Security Administration, 1000 Independence Avenue SW., Washington, DC 20585, telephone 202–586–8623.

SUPPLEMENTARY INFORMATION:

I. Background
II. Extension of Comment Period

I. Background

On September 7, 2011, DOE issued a notice of proposed rulemaking (NOPR) to propose the first comprehensive updating of regulations concerning Assistance to Foreign Atomic Energy Activities since 1986. (76 FR 55278) The NOPR reflected a need to make the regulations consistent with current global civil nuclear trade practices and nonproliferation norms, and to update the activities and technologies subject to the Secretary of Energy's specific authorization and DOE reporting requirements. It also identified destinations with respect to which most assistance would be generally authorized and destinations that would require a specific authorization by the Secretary of Energy. After careful consideration of all comments received, DOE published a SNOPR on August 2, 2013, to respond to those comments, propose new or revised rule changes, and afford interested parties a second opportunity to comment. (78 FR 46829). The comment period on the SNOPR was originally to close on October 31, 2013, but was extended until November 30, 2013. By this notice, DOE is reopening the comment period on the SNOPR. The comment period will close on April 2, 2014.

II. Extension of Comment Period

Due to the nature of the comments received, including a recommendation to withdraw the SNOPR, the Department has determined to re-open the comment period to April 2, 2014, as a means to afford additional time for the public to review and comment on the SNOPR and comments of other parties. Any comment received between November 30, 2013 and the publication of today's notice will be deemed timely, filed, and considered to be part of the record and will be considered together with all comments submitted within the re-opened comment period.

As provided in the SNOPR, if you submit information that you believe to be exempt by law from public disclosure, you should submit one complete copy, as well as one copy from which the information claimed to be exempt by law from public disclosure has been deleted. DOE is responsible for the final determination with regard to disclosure or nondisclosure of the information and for treating it accordingly under the DOE Freedom of Information regulations at 10 CFR 1004.11.

Issued in Washington, DC, on March 18, 2014.

Richard Goorevich,

Senior Policy Advisor.

[FR Doc. 2014–06547 Filed 3–24–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0145; Directorate Identifier 2013–NM–183–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Model FALCON 7X Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Dassault Aviation Model FALCON 7X airplanes. This proposed AD was prompted by reports that the pintle pins installed on a certain number of airplanes may be incorrectly protected against corrosion. This proposed AD would require replacing certain pintle pins on the left- and right-hand main landing gear (MLG) with a serviceable part. We are proposing this AD to detect and correct pintle pins that have been incorrectly corrosion-protected, which could cause the pintle pins to shear under normal load and lead to the collapse of the MLG during take-off or landing.

DATES: We must receive comments on this proposed AD by May 9, 2014.

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

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

For service information identified in this proposed AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425 227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0145; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647 5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM 116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 227–1137; fax: (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0145; Directorate Identifier

2013–NM–183–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0162, dated July 24, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Messier-Bugatti-Dowty, the manufacturer of the landing gears of the Falcon 7X aeroplanes, has advised that pintle pins Part Number (P/N) 55–2355007–01 being installed on a certain number of aeroplanes may be incorrectly protected against corrosion. These pins are designed to shear in case of excessive loads on the main landing gears so that structural damage would be contained after a landing gear collapse. The cadmium-coating inside the bore of suspect pins may not be compliant to the original thickness specifications. Inspection of a few removed parts in service revealed that traces of limited corrosion can be found on an unstressed area of the pins. Messier-Bugatti-Dowty identified a list of potentially affected pintle pins and subsequently, Dassault Aviation identified on which aeroplanes those pintle pins were installed.

This condition, if not corrected, may lead to corrosion of the pins and ultimately cause them to shear under normal load. This could result in landing gear collapse during take-off or landing.

To address this condition, Dassault Aviation, with the support of Messier-Bugatti-Dowty, developed Service Bulletin (SB) F7X–182 to provide instructions for removal of potentially affected pintle pins and replacement with serviceable parts.

For the reasons described above, this [EASA] AD requires replacement of pintle pins on affected airplanes. This [EASA] AD also prohibits installation of a potentially affected part on an aeroplane.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0145.

Relevant Service Information

Dassault Aviation has issued Mandatory Service Bulletin 7X–182, Revision 4, dated July 18, 2013. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 42 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement	20 work-hours × $85 per hour = $1,700	$17,000	$18,700	$785,400

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Amend § 39.13 by adding the following new airworthiness directive (AD):

Dassault Aviation: Docket No. FAA–2014–0145; Directorate Identifier 2013–NM–183–AD.

(a) Comments Due Date

We must receive comments by May 9, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Dassault Aviation Model FALCON 7X airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 32, Main Landing Gear.

(e) Reason

This AD was prompted by reports that the pintle pins installed on a certain number of airplanes may be incorrectly protected against corrosion. We are issuing this AD to detect and correct pintle pins that have been incorrectly corrosion-protected, which could cause the pintle pins to shear under normal load and lead to the collapse of the MLG during take-off or landing.

(f) Compliance

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

(g) Replacement

For airplanes having serial numbers 4 through 6 inclusive; 9, 12, 19, 21 through 25 inclusive; 29, 32, 33, 37, 39 through 42 inclusive; 45, 49 through 53 inclusive; 55, 56, 62, 63, 65, 67 through 69 inclusive; and 81, 82, 84, and 120: Within 2 months after the effective date of this AD, replace the pintle pins having part number (P/N) 55–2355007–01 on the left- and right-hand MLG with a serviceable part, in accordance with the Accomplishment Instructions of Dassault Aviation Mandatory Service Bulletin 7X–182, Revision 4, dated July 18, 2013.

(h) Parts Installation Prohibition

As of the effective date of this AD, no person may install a pintle pin having P/N 55–2355007–01, with the following serial numbers, on any airplane: EXC–0001, EXC–0003, EXC–0008, EXC–0009, EXC–0010, EXC–0015, EXC–0017, EXC–0018, EXC–0019, EXC–0020, EXC–0022, EXC–0023, EXC–0024, EXC–0025, EXC–0026, EXC–0027, EXC–0029, EXC–0030, EXC–0031, EXC–0033, EXC–0037, EXC–0038, EXC–0040, EXC–0041, EXC–0043, EXC–0044, EXC–0045, EXC–0046, EXC–0047, EXC–0050, EXC–0051, EXC–0052, EXC–0053, EXC–0054, EXC–0057, EXC–0059, EXC–0060, EXC–0061, EXC–0062, EXC–0063, EXC–0064, EXC–0065, EXC–0067, EXC–0069, EXC–0072, EXC–0074, EXC–0075, EXC–0076, EXC–0077, EXC–0078, EXC–0084, EXC–0091, EXC–0092, EXC–0093, EXC–0096, EXC–0098, EXC–0099, EXC–0101, EXC–0102, EXC–0103, EXC–0106, EXC–0107, EXC–0108, EXC–0109, EXC–0110, EXC–0111, EXC–0114, EXC–0115, EXC–0117, EXC–0119, EXC–0120, EXC–0121, EXC–0122, EXC–0123, EXC–0124, EXC–0125, EXC–0126, EXC–0127, EXC–0128, EXC–0129, EXC–0130, EXC–0131, EXC–0132, EXC–0133, EXC–0134, EXC–0135, EXC–0136, EXC–0137, EXC–0138, EXC–0139, EXC–0143, EXC–0144, EXC–0147, EXC–0148, EXC–0149, EXC–0150, EXC–0152, EXC–0153, EXC–0154, EXC–0155, EXC–0158, EXC–0162, EXC–0163, EXC–0164, EXC–0167, EXC–0168, EXC–0170, EXC–0172, EXC–0173, EXC–0175, EXC–0177, EXC–0178, EXC–0183, EXC–0184, EXC–0190, EXC–0192, EXC–0193, EXC–0194, EXC–0197, EXC–0198.

(i) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the following service information:

(1) Dassault Aviation Service Bulletin 7X–182, dated December 17, 2010.

(2) Dassault Aviation Service Bulletin 7X–182, Revision 1, dated December 7, 2011.

(3) Dassault Aviation Service Bulletin 7X–182, Revision 2, dated June 1, 2012.

(4) Dassault Aviation Service Bulletin 7X–182, Revision 3, dated February 26, 2013.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 227–1137; fax: (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they were approved by the State of Design Authority (or its delegated agent, or by the DAH with a State of Design Authority's design organization approval). For a repair method to be approved, the repair approval must specifically refer to this AD. You are required to ensure the product is airworthy before it is returned to service.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) issued EASA Airworthiness Directive 2013–0162, dated July 24, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0145.

(2) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 17, 2014.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–06492 Filed 3–24–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0170; Directorate Identifier 2013–NM–169–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2005–13–05, which applies to certain Boeing Model 747–400F series airplanes. AD 2005–13–05 currently requires inspections for cracking of the web, upper chord, and upper chord strap of the upper deck floor beams, and repair of any cracking. AD 2005–13–05 also requires a preventive modification of the upper deck floor beams, and repetitive inspections for cracking after accomplishing the modification. Since we issued AD 2005–13–05, the upper chords of the upper deck floor beams at certain stations have been determined to be structures that are susceptible to widespread fatigue damage, and certain airplanes with an initial modification require a second modification for the airplane to meet its limit of validity (LOV). This proposed AD would require that second modification and repetitive inspections for cracking and repair if necessary. We are proposing this AD to detect and correct fatigue cracking in certain upper chords of the upper deck floor beam, which could result in reduced structural integrity of the airplane and rapid decompression or reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by May 9, 2014.

ADDRESSES: You may send comments, using the procedures found in 14 CFR

11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0170; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *Nathan.P.Weigand@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0170; Directorate Identifier 2013–NM–169–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Structural fatigue damage is progressive. It begins as minute cracks, and those cracks grow under the action of repeated stresses. This can happen because of normal operational conditions and design attributes, or because of isolated situations or incidents such as material defects, poor fabrication quality, or corrosion pits, dings, or scratches. Fatigue damage can occur locally, in small areas or structural design details, or globally. Global fatigue damage is general degradation of large areas of structure with similar structural details and stress levels. Multiple-site damage is global damage that occurs in a large structural element such as a single rivet line of a lap splice joining two large skin panels. Global damage can also occur in multiple elements such as adjacent frames or stringers. Multiple-site-damage and multiple-element-damage cracks are typically too small initially to be reliably detected with normal inspection methods. Without intervention, these cracks will grow, and eventually compromise the structural integrity of the airplane, in a condition known as widespread fatigue damage (WFD). As an airplane ages, WFD will likely occur, and will certainly occur if the airplane is operated long enough without any intervention.

The FAA's WFD final rule (75 FR 69746, November 15, 2010) became effective on January 14, 2011. The WFD rule requires certain actions to prevent structural failure due to WFD throughout the operational life of certain existing transport category airplanes and all of these airplanes that will be certificated in the future. For existing and future airplanes subject to the WFD rule, the rule requires that design approval holders (DAHs) establish LOV of the engineering data that support the structural maintenance program. Operators affected by the WFD rule may not fly an airplane beyond its LOV, unless an extended LOV is approved.

The WFD rule (75 FR 69746, November 15, 2010) does not require identifying and developing maintenance actions if the DAHs can show that such actions are not necessary to prevent WFD before the airplane reaches the LOV. Many LOVs, however, do depend on accomplishment of future maintenance actions. As stated in the WFD rule, any maintenance actions necessary to reach the LOV will be mandated by airworthiness directives through separate rulemaking actions.

In the context of WFD, this action is necessary to enable DAHs to propose LOVs that allow operators the longest operational lives for their airplanes, and still ensure that WFD will not occur. This approach allows for an implementation strategy that provides flexibility to DAHs in determining the timing of service information development (with FAA approval), while providing operators with certainty regarding the LOV applicable to their airplanes.

On June 10, 2005, we issued AD 2005–13–05, Amendment 39–14141 (70 FR 35989, June 22, 2005) for certain Boeing Model 747–400F series airplanes. AD 2005–13–05 requires initial detailed and open-hole high frequency eddy current inspections for cracking of the web, upper chord, and upper chord strap of the upper deck floor beams, and repair of any cracking. AD 2005–13–05 also requires a preventive modification of the upper deck floor beams, and repetitive inspections for cracking after accomplishing the modification. AD 2005–13–05 resulted from reports of fatigue cracking found on the upper deck floor beam to frame attachment points. We issued AD 2005–13–05 to prevent fatigue cracks in the upper chord, upper chord strap, and the web of the upper deck floor beams and resultant failure of the floor beams.

Actions Since AD 2005–13–05, Amendment 39–14141 (70 FR 35989, June 22, 2005) Was Issued

Since we issued AD 2005–13–05, Amendment 39–14141 (70 FR 35989, June 22, 2005), we received reports that indicate that the upper chords of the upper deck floor beams at stations (STA) 340 through 520 have been determined to be structures that are susceptible to widespread fatigue damage, and airplanes that had an initial modification done before 15,000 total flight cycles require a second fastener hole zero-timing modification for the airplane to meet its LOV.

Relevant Service Information

We reviewed Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013. For information on the procedures and compliance times, see

this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2014–0170.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would retain all of the requirements of AD 2005–13–05, Amendment 39–14141 (70 FR 35989, June 22, 2005). This proposed AD would also require accomplishing the actions specified in the service information described previously.

Difference Between This Proposed AD and Service Information

The service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Explanation of Compliance Time

The compliance time for the modification specified in this proposed AD for addressing WFD was established to ensure that discrepant structure is modified before WFD develops in airplanes. Standard inspection techniques cannot be relied on to detect WFD before it becomes a hazard to flight. We will not grant any extensions of the compliance time to complete any AD-mandated service bulletin related to WFD without extensive new data that would substantiate and clearly warrant such an extension.

Costs of Compliance

We estimate that this proposed AD affects 13 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Pre-modification inspections [retained actions from AD 2005–13–05, Amendment 39–14141 (70 FR 35989, June 22, 2005).	11 work-hours × $85 per hour = $935.	$0	$935	$12,155.
Modification/inspections done during modification [retained actions from AD 2005-13–05, Amendment 39–14141 (70 FR 35989, June 22, 2005).	Up to 524 work-hours × $85 per hour = $44,540.	Up to 14,874	59,414	772,382.
Post-modification inspections [retained actions from AD 2005–13–05, Amendment 39–14141 (70 FR 35989, June 22, 2005).	66 work-hours × $85 per hour = $5,610.	0	5,610	72,930.
Zero-Timing Procedure Option 1 (including inspections) (proposed action).	71 work-hours × $85 per hour = $6,035.	0	6,035	Up to 78,455.
Zero-Timing Procedure Option 2 (including inspections) (proposed action).	103 work-hours × $85 per hour = $8,755.	0	8,755	Up to 113,815.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Amend § 39.13 by removing Airworthiness Directive (AD) 2005–13–05, Amendment 39–14141 (70 FR 35989, June 22, 2005), and adding the following new AD:

The Boeing Company: Docket No. FAA–2014–0170; Directorate Identifier 2013–NM–169–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by May 9, 2014.

(b) Affected ADs

This AD supersedes AD 2005–13–05, Amendment 39–14141 (70 FR 35989, June 22, 2005).

(c) Applicability

This AD applies to The Boeing Company Model 747–400F series airplanes, certificated in any category, as identified in Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a report indicating that the upper chords of the upper deck floor floor beams at stations (STA) 340 through 520 have been determined to be structures that are susceptible to widespread fatigue damage, and airplanes that had an initial modification done before 15,000 total flight cycles require a second fastener hole zero-timing modification for the airplane to meet its limit of validity (LOV). We are issuing this AD to detect and correct fatigue cracking in certain upper chords of the upper deck floor beam, which could result in reduced structural integrity of the airplane and rapid decompression or reduced controllability of the airplane.

(f) Compliance

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

(g) Retained Inspections With Revised Service Information

This paragraph restates the requirements of paragraph (g) of AD 2005–13–05, Amendment 39–14141 (70 FR 35989, June 22, 2005), with revised service information. Before the accumulation of 15,000 total flight cycles, or within 1,000 flight cycles after July 27, 2005 (the effective date of AD 2005–13–05 whichever is later: Accomplish detailed and open-hole high frequency eddy current (HFEC) inspections for cracking of the web, upper chord, and upper chord strap of the upper deck floor beams, by doing all the applicable actions in accordance with Part 3.B.1. of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, dated May 9, 2002; or Part 1 of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013. As of the effective date of this AD, only Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013, may be used.

(h) Retained Repair With Revised Service Information and Revised Repair Approval Language

This paragraph restates the requirements of paragraph (h) of AD 2005–13–05, Amendment 39–14141 (70 FR 35989, June 22, 2005), with revised service information and revised repair approval language. If any crack is found during any inspection required by paragraph (g) of this AD: Before further flight, accomplish the actions required by paragraph (h)(1) and (h)(2) of this AD.

(1) Repair in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, dated May 9, 2002; or Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013; except where these service bulletins specify to contact Boeing for appropriate action, before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (o) of this AD. After the effective date of this AD, only Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013, may be used.

(2) Accomplish the inspections and preventive modification of the floor beams by doing all the actions in accordance with Part 3.B.2. or Part 3.B.3., as applicable, of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, dated May 9, 2002, or Part 2 or Part 3 of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013. If any crack is found during any inspection, before further flight, repair as required by paragraph (h)(1) of this AD. After the effective date of this AD, only Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013, may be used.

(i) Retained Modification With Revised Service Information

This paragraph restates the requirements of paragraph (i) of AD 2005–13–05, Amendment 39–14141 (70 FR 35989, June 22, 2005), with revised service information. If no crack is found during any inspection required by paragraph (g) of this AD: Accomplish the actions required by either paragraph (i)(1) or (i)(2) of this AD, at the time specified.

(1) Before further flight: Accomplish the inspections and preventive modification of the floor beam by doing all the actions in accordance with Part 3.B.2 or Part 3.B.3., as applicable, of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, dated May 9, 2002; or Part 2 or Part 3 of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013. If the preventive modification is performed concurrently with the inspections required by paragraph (g) of this AD, the upper chord straps must be removed when performing the open-hole HFEC inspection. If any crack is found during any inspection, before further flight, repair as required by paragraph (h)(1) of this AD. After the effective date of this AD, only Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013, may be used.

(2) Before the accumulation of 20,000 total flight cycles, or within 1,000 flight cycles after July 27, 2005 (the effective date of AD 2005–13–05, Amendment 39–14141 (70 FR 35989, June 22, 2005), whichever is later: Accomplish the inspections and preventive modification of the upper deck floor beams, by doing all the actions in accordance with Part 3.B.2. or 3.B.3. as applicable, of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, dated May 9, 2002; or Part 2 or Part 3, as applicable, of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013. If any crack is found during any inspection, before further flight, repair as required by paragraph (h)(1) of this AD. After the effective date of this AD, only Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013, may be used.

(j) Retained Post-Modification Inspections With Revised Service Information

This paragraph restates the requirements of paragraph (j) of AD 2005–13–05, Amendment 39–14141 (70 FR 35989, June 22, 2005), with revised service information. Within 15,000 flight cycles after accomplishing the applicable preventive modification required by paragraph (h)(2), (i)(1), or (i)(2) of this AD: Accomplish the inspections required by either paragraph (j)(1) or (j)(2) of this AD; if any crack is found during any inspection, before further flight, repair as required by paragraph (h)(1) of this AD.

(1) Accomplish detailed and surface HFEC inspections for cracking of the web, upper chord, and upper chord strap of the upper deck floor beams, by doing all the applicable actions in accordance with Part 3.B.4. of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, dated May 9, 2002; or Part 4 of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013. If no crack is found, repeat the inspections at intervals not to exceed 1,000 flight cycles. After the effective date of this AD, only Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013, may be used.

(2) Accomplish detailed and open-hole HFEC inspections for cracking of the web, upper chord, and strap of the upper deck floor beams, by doing all the applicable actions in accordance with Part 3.B.5. of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, dated May 9, 2002; or Part 5 of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013. If no crack is found, repeat the inspections at intervals not to exceed 5,000 flight cycles. After the effective date of this AD, only Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013, may be used.

(k) New Floor Beam Hole Zero-Timing

Within 20,000 flight cycles after accomplishing the preventive modification of the Station 340 to Station 520 upper deck floor beams specified in paragraph (h)(2), (i)(1), or (i)(2) of this AD, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later: Accomplish the floor beam hole zero-timing in accordance with Part 6. of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013.

(l) New Post-Floor Beam Hole Zero-Timing Inspections

Within 15,000 flight cycles after accomplishing the floor beam hole zero-timing required by paragraph (k) of this AD: Accomplish the inspections required by either paragraph (l)(1) or (l)(2) of this AD; if any cracking is found during any inspection, before further flight, repair as required by paragraph (h)(1) of this AD.

(1) Accomplish detailed and surface HFEC inspections for cracking of the web, upper chord, and straps of the Station 340 to Station 520 upper deck floor beams, by doing all the applicable actions, in accordance with Part 4 of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013. If no cracking is found, repeat the inspections at intervals not to exceed 1,000 flight cycles.

(2) Accomplish detailed and open-hole HFEC inspections for cracking of the web, upper chord, and straps of the Station 340 to Station 520 upper deck floor beams, by doing all the applicable actions, in accordance with Part 5. of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013. If no cracking is found, repeat the inspections at intervals not to exceed 5,000 flight cycles.

(m) Exception to Service Information

Where Boeing Service Bulletin 747–53A2443, Revision 2, dated August 2, 2013, specifies a compliance time ''after the revision date on this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(n) Credit for Previous Actions

This paragraph provides credit for the inspections, repairs, and modification required by paragraphs (g) through (j) of this AD, if the corresponding actions were performed before the effective date of this AD using Boeing Service Bulletin 747–53A2443, Revision 1, dated June 25, 2009.

(o) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (p)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved for AD 2005–13–05, Amendment 39–14141 (70 FR 35989, June 22, 2005), are approved as AMOCs for the corresponding requirements of paragraphs (g) through (j) (the retained actions) of this AD.

(p) Related Information

(1) For more information about this AD, contact Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6428; fax: 425–917–6590; email: *Nathan.P.Weigand@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 17, 2014.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–06494 Filed 3–24–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0144; Directorate Identifier 2013–NM–232–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier Model DHC–8–400, –401, and –402 airplanes. This proposed AD was prompted by reports of rudder bearings falling out of the fore rudder hinge bracket during assembly. This proposed AD would require a proof load test and detailed inspections; and installation of a new bearing, reaming, or repair of the bearing if necessary. We are proposing this AD to detect and correct improper bearing installation, which could result in abnormal wear and potential increased freeplay in the rudder system, and resultant airframe vibration, leading to compromise of the flutter margins of the airplane.

DATES: We must receive comments on this proposed AD by May 9, 2014.

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

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

For service information identified in this proposed AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0144; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Ricardo Garcia, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7331; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about

this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0144; Directorate Identifier 2013–NM–232–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2013–34, dated November 1, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> It was reported that rudder bearings were falling out of the fore rudder hinge bracket during assembly. Investigation revealed the root cause as improper application of the adhesive compound and the lack of application of sealant during the installation of the rudder bearings into the fore rudder hinge bracket. The improper bearing installation, if not corrected, could result in abnormal wear and could potentially increase the freeplay in the rudder system. This may result in airframe vibration, eventually compromising the flutter-margins of the aeroplane.
>
> This [Canadian] AD mandates the inspection, and rectification as required, of the fore rudder bearings in the hinge bracket assembly.

Required actions include a proof load test for slippage and freeplay. Related investigative actions include a detailed inspection of a certain bearing for damage, corrosion, and dimension conformity; and a detailed inspection of the fitting bore of the fore rudder hinge bracket for wear, damage, corrosion, and dimension conformity. Corrective actions include installation of a new bearing, reaming, or repair of the bearing. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0144.

Relevant Service Information

Bombardier has issued Service Bulletin 84–27–44, Revision 'A,' dated June 10, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

In many FAA transport ADs, when the service information specifies to contact the manufacturer for further instructions if certain discrepancies are found, we typically include in the AD a requirement to accomplish the action using a method approved by either the FAA or the State of Design Authority (or its delegated agent).

We have recently been notified that certain laws in other countries do not allow such delegation of authority, but some countries do recognize design approval organizations. In addition, we have become aware that some U.S. operators have used repair instructions that were previously approved by a State of Design Authority or a Design Approval Holder (DAH) as a method of compliance with this provision in FAA ADs. Frequently, in these cases, the previously approved repair instructions come from the airplane structural repair manual or the DAH repair approval statements that were not specifically developed to address the unsafe condition corrected by the AD. Using repair instructions that were not specifically approved for a particular AD creates the potential for doing repairs that were not developed to address the unsafe condition identified by the MCAI AD, the FAA AD, or the applicable service information, which could result in the unsafe condition not being fully corrected.

To prevent the use of repairs that were not specifically developed to correct the unsafe condition, this proposed AD would require that the repair approval specifically refer to the FAA AD. This change is intended to clarify the method of compliance and to provide operators with better visibility of repairs that are specifically developed and approved to correct the unsafe condition. In addition, we use the phrase ''its delegated agent, or the DAH with State of Design Authority design organization approval, as applicable'' in this proposed AD to refer to a DAH authorized to approve required repairs for this proposed AD.

Costs of Compliance

We estimate that this proposed AD affects 78 airplanes of U.S. registry.

We also estimate that it would take about 7 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost $0 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $46,410, or $595 per product.

In addition, we estimate that any necessary follow-on actions would take about 8 work-hours and require parts costing $155, for a cost of $835 per product. We have no way of determining the number of aircraft that might need this action.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Amend § 39.13 by adding the following new airworthiness directive (AD):

Bombardier, Inc.: Docket No. FAA–2014–0144; Directorate Identifier 2013–NM–232–AD.

(a) Comments Due Date

We must receive comments by May 9, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes, certificated in any category, serial numbers 4166 through 4175, inclusive.

(d) Subject

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

(e) Reason

This AD was prompted by reports of rudder bearings falling out of the fore rudder hinge bracket during assembly. We are issuing this AD to detect and correct improper bearing installation, which could result in abnormal wear and potential increased freeplay in the rudder system, and resultant airframe vibration, leading to compromise of the flutter margins of the airplane.

(f) Compliance

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

(g) Proof Load Test

Within 2,000 flight hours or 12 months after the effective date of this AD, whichever occurs first, do a proof load test for slippage and freeplay (relative movement between the bearing and fitting), in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–44, Revision 'A,' dated June 10, 2009. If no slippage or freeplay is detected during the proof load test required by this paragraph, before further flight, identify the area with a marker and apply sealant if missing, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–44, Revision 'A,' dated June 10, 2009; and after identifying the area with a marker and applying sealant, no further action is required by this AD.

(h) Rectification

If any slippage or freeplay (relative movement between the bearing and fitting) is detected during the test required by paragraph (g) of this AD, before further flight, do the actions specified in paragraphs (h)(1) and (h)(2) of this AD.

(1) Do a detailed inspection of bearing DSC8–6 for damage, corrosion, and dimension conformity, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–44, Revision 'A,' dated June 10, 2009. If damage, corrosion, or dimension non-conformity is found, before further flight, install new bearing DSC8–6, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–44, Revision 'A,' dated June 10, 2009.

(2) Do a detailed inspection of the fitting bore of the fore rudder hinge bracket assembly for wear, damage, corrosion, and dimension conformity, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–44, Revision 'A,' dated June 10, 2009.

(i) If damage, corrosion, or dimension non-conformity is found during the inspection required by paragraph (h)(2) of this AD, before further flight, ream the inside diameter, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–27–44, Revision 'A,' dated June 10, 2009.

(ii) If bore wear or damage beyond 0.8140-inch diameter is found during the inspection required by paragraph (h)(2) of this AD, before further flight, repair using a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent, or the Design Approval Holder (DAH) with TCCA design organization approval). For a repair method to be approved, the repair approval must specifically refer to this AD.

(i) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 84–27–44, dated April 13, 2009, which is not incorporated by reference in this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the New York ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they were approved by the State of Design Authority (or its delegated agent, or the DAH with a State of Design Authority's design organization approval). For a repair method to be approved, the repair approval must specifically refer to this AD. You are required to ensure the product is airworthy before it is returned to service.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2013–34, dated November 1, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0144.

(2) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 14, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–06493 Filed 3–24–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0180; Directorate Identifier 2014–CE–004–AD]

RIN 2120–AA64

Airworthiness Directives; Przedsiebiorstwo Doswiadczalno-Produkcyjne Szybownictwa ''PZL-Bielsko'' Model SZD–50–3 ''Puchacz'' Sailplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Przedsiebiorstwo Doswiadczalno-Produkcyjne Szybownictwa ''PZL-Bielsko'' Model SZD–50–3 ''Puchacz'' sailplanes that would supersede AD 2004–11–10. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as fatigue damage of the welded joint between the airbrake torque tube and the airbrake control system lever located inside the fuselage. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by May 9, 2014.

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

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

For service information identified in this proposed AD, contact Allstar PZL Glider, Sp. z o. o., ul. Cieszynska 325, 43–300 Bielsko-Biala, Poland; telephone: +48 33 812 50 26; fax: +48 33 812 3739; email: *techsupport@szd.com.pl;* Internet: *http://szd.com.pl/en/products/szd-50-3-puchacz*. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0180; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0180; Directorate Identifier 2014–CE–004–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On May 27, 2004, we issued AD 2004–11–10, Amendment 39–13656 (69 FR 31872; June 8, 2004). That AD required actions intended to address an unsafe condition on Przedsiebiorstwo Doswiadczalno-Produkcyjne Szybownictwa ''PZL-Bielsko'' Model SZD–50–3 ''Puchacz'' sailplanes.

Since we issued AD 2004–11–10 (69 FR 31872; June 8, 2004), service information has been introduced that identifies new inspection and replacement requirements on the airbrake torque tube and the airbrake control system lever.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2014–0015, dated January 14, 2014 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Several occurrences of airbrake torque tube failure were reported on SZD–50–3 ''Puchacz'' sailplanes. In all cases, as a result of disruption of the welded joint between torque tube and the lever, the broken torque tube detached from the lever located in the fuselage. The result of subsequent investigations identified fatigue damage, as a consequence of periodical striking load exceeding the established maximum value, to be a possible failure cause. Additionally, corrosion damage was identified at internal surface of the opened tube.
>
> This condition, if not detected and corrected, would inhibit the function of the airbrake, possibly resulting in reduced control of the sailplane.
>
> Prompted by these findings, Allstar PZL issued Service Bulletin (SB) No. BE–052/SZD–50–3/2003 to provide inspection instructions. CAO of Poland issued AD SP–0052–2003–A to require a one-time inspection of the airbrake torque tube in the area of welded joint in accordance with that SB.
>
> Since that AD was issued, Allstar PZL issued SB No. BE–062/SZD–50–3/2013 to introduce repetitive inspections and accomplishment instructions for reinforced torque tube inspections.
>
> For the reasons described above, this AD supersedes CAO of Poland AD SP–0052–2003–A and requires repetitive inspections of the airbrake torque tube and, depending on findings, replacement with a serviceable part.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0180.

Relevant Service Information

Allstar PZL Glider has issued Allstar PZL Glider Sp. Z o.o. Mandatory Service Bulletin No. BE–062/SZD–50–3/2013 ''Puchacz'', dated September 16, 2013. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of

Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD will affect 5 products of U.S. registry. We also estimate that it would take about 5 hours for the proposed annual inspection of sailplanes equipped with the old version torque tube; 1 hour for the proposed annual inspection of sailplanes equipped with the new version torque tube; and 5 hours for the proposed 1,000-hour annual inspection of sailplanes equipped with the new version torque tube. The average labor rate is $85 per work-hour.

In addition, we estimate that any necessary follow-on actions would take about 5 work-hours and require parts costing $875, for a cost of $1,300 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Amend § 39.13 by removing Amendment 39–13656 (69 FR 31872, June 8, 2004), and adding the following new AD:

Przedsiebiorstwo Doswiadczalno-Produkcyjne Szybownictwa ''PZL-Bielsko'': Docket No. FAA–2014–0180; Directorate Identifier 2014–CE–004–AD.

(a) Comments Due Date

We must receive comments by May 9, 2014.

(b) Affected ADs

This AD supersedes AD 2004–11–10, Amendment 39–13656 (69 FR 31872, June 8, 2004).

(c) Applicability

This AD applies to Przedsiebiorstwo Doswiadczalno-Produkcyjne Szybownictwa ''PZL-Bielsko'' Model SZD–50–3 ''Puchacz'' sailplanes, all serial numbers, certificated in any category.

(d) Subject

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

(e) Reason

This AD was prompted by continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as fatigue damage of the welded joint between the airbrake torque tube and the airbrake control system lever located inside the fuselage. We are issuing this AD to detect and correct fatigue damage of the airbrake torque tube and the airbrake control system lever which may cause a malfunction of the airbrake, resulting in loss of control of the sailplane.

(f) Actions and Compliance

Unless already done, do the following actions in paragraphs (f)(1) through (f)(6) of this AD:

(1) *For sailplanes equipped with the old version torque tube, with or without reinforced corner:* Initially within 30 days after the effective date of this AD and repetitively thereafter at intervals not to exceed every 12 months or 100 hours time-in-service (TIS), whichever occurs first, do a detailed inspection of the airbrake torque tube following the inspection procedures in paragraph (2)(b) in Allstar PZL Glider Sp. Z o.o. Service Bulletin No. BE–062/SZD–50–3/2013 ''Puchacz'', dated September 16, 2013.

(2) *For sailplanes equipped with the new type torque tube, with reinforced corner:* Initially within 30 days after the effective date of this AD and repetitively thereafter at intervals not to exceed every 12 months or 100 hours TIS, whichever occurs first, visually inspect the welded joint of the airbrake torque tube following the conditions of inspection, first bulleted item of paragraph (2)(a)(2), in Allstar PZL Glider Sp. Z o.o. Service Bulletin No. BE–062/SZD–50–3/2013 ''Puchacz'', dated September 16, 2013.

(3) *For sailplanes equipped with the new type torque tube, with reinforced corner:* During the first 1,000-hour inspection after the effective date of this AD, and then repetitively at each scheduled 1,000-hour inspection, do a detailed inspection of the welded joint of the airbrake torque tube following the inspection procedures in paragraph (2)(b) in Allstar PZL Glider Sp. Z o.o. Service Bulletin No. BE–062/SZD–50–3/2013 ''Puchacz'', dated September 16, 2013.

(4) *For all sailplanes:* If during any inspection required by paragraph (f)(1), (f)(2), or (f)(3) of this AD any damage is found as detailed in paragraph (2)(c) of PZL Glider Sp. Z o.o. Service Bulletin No. BE–062/SZD–50–3/2013 ''Puchacz'', dated September 16, 2013, replace the airbrake torque tube as described in the Post-inspection procedures, paragraph (2)(c), of Allstar PZL Glider Sp. Z o.o. Service Bulletin No. BE–062/SZD–50–3/2013 ''Puchacz'', dated September 16, 2013.

(5) *For all sailplanes:* Replacement of an airbrake torque tube, as required by paragraph (4) of this AD, does not constitute terminating action for inspection requirements of paragraphs (f)(1), (f)(2), and (f)(3) of this AD.

(6) *For all sailplanes:* Compliance with the requirements of paragraphs (f)(1), (f)(2) or (f)(3) of this AD can be demonstrated by incorporating the applicable required inspections and follow-on corrective actions, as specified in Allstar PZL Glider Sp. Z o.o. Service Bulletin No. BE–062/SZD–50–3/2013 ''Puchacz'', dated September 16, 2013 into the approved instructions for continued airworthiness (ICA) of the maintenance program.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2014–0015, dated January 14, 2014, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0180. For service information related to this AD, contact Allstar PZL Glider, Sp. z o. o., ul. Cieszynska 325, 43–300 Bielsko-Biala, Poland; telephone: +48 33 812 50 26; fax: +48 33 812 3739; email: *techsupport@szd.com.pl;* Internet: *http://szd.com.pl/en/products/szd-50-3-puchacz*. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on March 19, 2014.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–06497 Filed 3–24–14; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA–2007–0082]

RIN 0960–AG71

Revised Medical Criteria for Evaluating Human Immunodeficiency Virus (HIV) Infection and for Evaluating Functional Limitations in Immune System Disorders; Correction and Extension of Comment Period

AGENCY: Social Security Administration.

ACTION: Proposed rule; correction and extension of comment period.

SUMMARY: This document corrects and extends the deadline for submitting comments on the notice of proposed rulemaking (NPRM) published in the **Federal Register** on Wednesday, February 26, 2014, regarding Revised Medical Criteria for Evaluating Human Immunodeficiency Virus (HIV) Infection and for Evaluating Functional Limitations in Immune System Disorders.

DATES: The comment period for the proposed rule, published February 26, 2014 (79 FR 10730), is extended. To ensure that your comments are considered, we must receive them by no later than May 27, 2014.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2007–0082 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. Internet: We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov*. Use the *Search* function to find docket number SSA–2007–0082. The system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. Fax: Fax comments to (410) 966–2830.

3. Mail: Address your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Cheryl Williams, Office of Medical Listings Improvement, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: On February 26, 2014 we published an NPRM at 79 FR 10730 that proposed to revise our medical criteria for evaluating HIV infection and functional limitations in immune system disorders. We provided the public with a 60-day comment period. The NPRM incorrectly included criteria in listing of impairment 113.00 that we did not intend to include. We are correcting that error and extending the comment period in order that the public may have a full sixty days to comment following this correction.

Correction

In proposed rule FR Doc. 2014–04124, beginning on page 10730 in the issue of Wednesday, February 26, 2014, in the proposed regulatory language section, make the following corrections:

Appendix 1 to Subpart P of Part 404—[Corrected]

■ 1. On page 10739 in the 2nd column, in Listing 113.00 of Part B of Appendix 1 to Subpart P of Part 404, remove the sentence of paragraph A. that reads, ''If you have HIV infection, we use the criteria in 114.08E to evaluate carcinoma of the cervix, Kaposi sarcoma, lymphoma, and squamous cell carcinoma of the anal canal and anal margin.''.

Extension of Comment Period

This notice requested that the public submit comments by April 28, 2014.

We are hereby extending the deadline for submitting comments to May 27, 2014.

Dated: March 19, 2014.

Carolyn W. Colvin,

Acting Commissioner of Social Security.

[FR Doc. 2014–06524 Filed 3–24–14; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16 and 121

[Docket No. FDA–2013–N–1563]

Appendix 4 To Draft Qualitative Risk Assessment of Risk of Activity/Food Combinations for Activities (Outside the Farm Definition) Conducted in a Facility Co-Located on a Farm; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or we) is extending the comment period for a document that appeared in the **Federal Register** of December 24, 2013 (78 FR 78064), entitled ''Appendix 4 to Draft Qualitative Risk Assessment of Risk of Activity/Food Combinations for Activities (Outside the Farm Definition) Conducted in a Facility Co-Located on a Farm'' (draft RA Appendix) to June 30, 2014. We are taking this action to keep the comment period for the draft RA Appendix consistent with the comment period for the proposed rule.

DATES: FDA is extending the comment period on the draft RA Appendix. Submit either electronic or written comments on the proposed rule and the information collection by June 30, 2014.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written comments to Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ryan Newkirk, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–2428.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 24, 2013, we published a document entitled ''Appendix 4 to Draft Qualitative Risk Assessment of Risk of Activity/Food Combinations for Activities (Outside the Farm Definition) Conducted in a Facility Co-Located on a Farm'' (the draft RA Appendix) with a 100-day comment period on the provisions of the proposed rule.

FDA has received requests for an extension of the comment period on the proposed rule entitled ''Focused Mitigation Strategies to Protect Food Against Intentional Adulteration'' (78 FR 78014). This document directly relates to the proposal. The requests conveyed concern that the current 100-day comment period does not allow time to thoroughly analyze the proposal, due to the inherent complexity and unique nature of food defense issues. FDA has considered the requests and is granting an extension of the comment period to June 30, 2014, for the draft RA Appendix to allow interested persons additional time to submit comments. Elsewhere in this issue of the **Federal Register,** we are also extending the comment period for the proposed rule ''Focused Mitigation Strategies to Protect Food Against Intentional Adulteration.'' To clarify, FDA is requesting comment on all issues raised by the document.

II. Request for Comments

Interested persons may submit either electronic comments regarding the proposed rule to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: March 20, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–06469 Filed 3–24–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16 and 121

[Docket No. FDA–2013–N–1425]

RIN 0910–AG63

Focused Mitigation Strategies To Protect Food Against Intentional Adulteration; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or we) is extending the comment period for the notice of proposed rulemaking that appeared in the **Federal Register** of December 24, 2013 (78 FR 78014), entitled ''Focused Mitigation Strategies to Protect Food Against Intentional Adulteration'' and its information collection provisions. We are taking this action in response to requests for an extension to allow interested persons an opportunity to fully review and analyze the approaches FDA has proposed for the rule and its potential impact as well as to consider the complexity and if the proposal has the flexibility to address the many types of food operations that will be affected.

We also are taking this action to keep the comment period for the information collection provisions associated with the rule consistent with the comment period for the proposed rule.

DATES: FDA is extending the comment period on the proposed rule and its information collection provisions. Submit either electronic or written comments on the proposed rule and the information collection by June 30, 2014.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2013–N–1425 and/or Regulatory Information Number (RIN) 0910–AG63, by any of the following methods, except that comments on information collection issues under the PRA must be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) (see the ''Paperwork Reduction Act of 1995'' section of this document).

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- Mail/Hand delivery/Courier (for paper submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name, Docket No. FDA–2013–N–1425, and RIN 0910–AG63 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Request for Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov,* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: *With regard to the proposed rule:* Ryan Newkirk, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–2428.

With regard to the information collection: Domini Bean, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400T, Rockville, MD 20850, *Domini.Bean@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 24, 2013, we published a proposed rule entitled ''Focused Mitigation Strategies to Protect Food Against Intentional Adulteration'' with a 100-day comment period on the provisions of the proposed rule and on the information collection provisions that are subject to review by OMB under the PRA (44 U.S.C. 3501–3520).

FDA has received requests for an extension of the comment period on the proposed rule. The requests conveyed concern that the current 100-day comment period does not allow time to thoroughly analyze the proposed rule since this is unlike any other proposal and due to the inherent complexity and unique nature of food defense issues. The requests also stated an extended comment period would allow interested persons an opportunity to fully review and analyze the approaches FDA has proposed for the rule and its potential impact as well as consider the complexity and if the proposal has the flexibility to address the many types of food operations that will be affected. FDA has considered the requests and is granting an extension of the comment period to June 30, 2014, for the ''Focused Mitigation Strategies to Protect Food Against Intentional Adulteration'' proposed rule to allow interested persons additional time to submit comments. We also are extending the comment period for the information collection provisions to June 30, 2014, to make the comment period for the information collection provisions the same as the comment period for the provisions of the proposed rule. To clarify, FDA is requesting comment on all issues raised by the proposed rule.

II. Paperwork Reduction Act of 1995

Interested persons may either submit electronic comments regarding the information collection to *oira_submission@omb.eop.gov* or fax written comments to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285. All comments should be identified with the title ''Focused Mitigation Strategies to Protect Food Against Intentional Adulteration.''

III. Request for Comments

Interested persons may submit either electronic comments regarding the proposed rule to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: March 20, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–06468 Filed 3–24–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. FDA–2014–F–0295]

DSM Nutritional Products; Filing of Food Additive Petition (Animal Use)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of petition.

SUMMARY: The Food and Drug Administration (FDA) is announcing that DSM Nutritional Products has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 25-hydroxyvitamin D_3 in feed for swine.

DATES: Submit either electronic or written comments on the petitioner's request for categorical exclusion from preparing an environmental assessment or environmental impact statement by April 24, 2014.

ADDRESSES: Submit electronic comments to: *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Isabel W. Pocurull, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–453–6853.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5)), notice is given that a food additive petition (FAP 2280) has been filed by DSM Nutritional Products, 45 Waterview Blvd., Parsippany, NJ 07054. The petition proposes to amend Title 21 of the Code of Federal Regulations (CFR) in part 573 *Food Additives Permitted in Feed and Drinking Water of Animals* (21 CFR part 573) to provide for the safe use of 25-hydroxyvitamin D_3 in feed for swine.

The petitioner has requested a categorical exclusion from preparing an environmental assessment or environmental impact statement under 21 CFR 25.32(r). Interested persons may submit either electronic or written comments regarding this request for categorical exclusion to the Division of Dockets Management (see **DATES** and **ADDRESSES**). Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 19, 2014.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2014–06487 Filed 3–24–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 860

[Docket No. FDA–2013–N–1529]

Medical Device Classification Procedures

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations governing classification and reclassification of medical devices to conform to the

applicable provisions in the Food and Drug Administration Safety and Innovation Act (FDASIA). FDA is also proposing changes unrelated to the new FDASIA requirements to update its regulations governing classification and reclassification of medical devices. FDA is taking this action to codify the procedures and criteria that apply to classification and reclassification of medical devices and to provide for classification of devices in the lowest regulatory class consistent with the public health and the statutory scheme for device regulation.

DATES: Submit either electronic or written comments on the proposed rule by June 23, 2014. Submit comments on information collection issues under the Paperwork Reduction Act of 1995 (the PRA) by April 24, 2014.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2013–N–1529 by any of the following methods, except that comments on information collection issues under the Paperwork Reduction Act of 1995 must be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) (see the ''Paperwork Reduction Act of 1995'' section of this document).

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- *Mail/Hand delivery/Courier (for paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2013–N–1529 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Marjorie Shulman, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1536, Silver Spring, MD 20993, 301–796–6572; or Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448, 301–827–6210.

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SUPPLEMENTARY INFORMATION:

I. Background

FDA is proposing to revise the regulations in part 860 (21 CFR part 860) to conform to recent changes made in FDASIA to sections 513(e) and 515(b) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(e) and 360e(b)), which became effective on July 9, 2012. These provisions established processes for reclassification of devices by administrative order instead of by regulation. FDA also proposes to update other reclassification provisions and to clarify the meaning of certain terms related to device classification and reclassification.

II. Legal Authority

The FD&C Act (21 U.S.C. 301 *et seq.*) establishes a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act established the following three categories (classes) of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness: class I (general controls), class II (special controls), and class III (premarket approval). For simplicity, FDA will refer to ''reasonable assurance of safety and effectiveness,'' the basic concept of device regulation, as ''RASE.'' Under section 513(d) of the FD&C Act, devices that were in commercial distribution before the enactment of the 1976 amendments in May 28, 1976 (generally referred to as preamendments devices), are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device.

Section 513(e) of the FD&C Act provides that FDA may, by administrative order published in the **Federal Register**, reclassify a device based upon ''new information.'' FDA can initiate a reclassification under section 513(e) of the FD&C Act, or an interested person may petition FDA to reclassify a device. The term ''new information,'' as used in section 513(e) of the FD&C Act, includes information developed as a result of a reevaluation of the data before the Agency when the device was originally classified, as well as information not presented, not available, or not developed at that time. (See, e.g., *Holland-Rantos* v. *United States Dep't. of Health, Educ., & Welfare,* 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch,* 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard,* 366 F.2d 177 (7th Cir. 1966).)

Section 608 of FDASIA amends section 513(e) of the FD&C Act and changes the procedure to reclassify a device under section 513(e). Under the new procedures, when FDA reclassifies devices under section 513(e), it must do so through administrative order. Prior to the publication of a final order, FDA must also publish a proposed order in the **Federal Register** and consider any comments submitted on the proposed order. FDA must, in addition, hold a device classification panel meeting (21 U.S.C. 360c(b)). The panel meeting must occur before the final order is published, and may occur either before or after the proposed order is published. The proposed order must include the following: (1) A substantive summary of valid scientific evidence, including the public health benefits and risks of the device, (2) when reclassifying from class II to class III, an explanation that general and special controls are insufficient to reasonably assure safety and effectiveness, and (3) when reclassifying from class III to class II, an explanation that general and special controls are sufficient to reasonably assure safety and effectiveness.

Section 608 of FDASIA also amends section 515(b) of the FD&C Act. Under section 515(b) of the FD&C Act as amended, preamendments devices that have been classified into class III and devices found substantially equivalent by means of premarket notification (510(k)) procedures to such preamendments devices or to devices within that generic device type may be marketed without submission of a premarket approval application (PMA) until FDA issues a final order requiring premarket approval. The process to require approval of a PMA for a preamendments class III device requires that FDA publish a proposed order in the **Federal Register**, hold an advisory committee meeting, and consider comments on the proposed order.

Under section 515(b)(2) of the FD&C Act as amended, a proposed order to support the call for PMAs must: (1) Contain proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA (or a declared completed product development protocol (PDP) under section 515(f)) and the benefit to the public from the use of the device; (2) provide an opportunity for the submission of comments on the proposed order and the proposed findings; and (3) provide an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device. After consideration of comments on the proposed order and findings, FDA must issue: (1) An administrative order requiring approval of a PMA and publish in the **Federal Register** findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from the use of the device or (2) publish in the **Federal Register** a notice terminating the process to require approval of a PMA together with reasons for such termination, and initiate reclassification under section 513(e) of the FD&C Act.

Under section 501(f) of the FD&C Act (21 U.S.C. 351(f)), a preamendments class III device may be commercially distributed without a PMA or a notice of completion of a PDP until 90 days after FDA issues a final order requiring premarket approval for the device, or 30 months after final classification of the device under section 513 of the FD&C Act, whichever is later.

FDA refers to devices that were not in commercial distribution before May 28, 1976, as ''postamendments devices.'' These devices are classified automatically under section 513(f) of the FD&C Act into class III without any FDA rulemaking process. Those devices remain in class III and require the filing of a PMA, unless and until: (1) FDA reclassifies the device into class I or II; (2) FDA issues an order classifying the device into class I or II under section 513(f)(2) of the FD&C Act; or (3) FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the FD&C Act, to a predicate device that does not require the filing of a PMA. FDA determines whether new devices are substantially equivalent to previously cleared devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and 21 CFR part 807.

Section 513(f)(3) of the FD&C Act provides for reclassification of postamendments devices. Under this section, FDA may initiate, or the manufacturer or importer of a device may petition for the reclassification of a device classified into class III by operation of law under section 513(f)(1) of the FD&C Act.

Reclassification of transitional devices is governed by section 510(*l*)(2) of the FD&C Act. Under section 520(*l*)(2) of the FD&C Act (21 U.S.C. 360j(l)(2)), FDA may initiate, or the manufacturer or importer of a device may petition for the reclassification of a device classified into class III by operation of law under section 520(*l*)(1). The 1976 amendments broadened the definition of ''device'' in section 201(h) of the FD&C Act (21 U.S.C. 321(h)) to include certain articles that were once regulated as drugs. Under the 1976 amendments, Congress classified all those devices previously regulated as new drugs into class III (generally referred to as transitional devices). Congress amended section 520(*l*) of the FD&C Act to direct FDA to collect certain safety and effectiveness information from the manufacturers of transitional devices still remaining in class III to determine whether the devices should be reclassified into class II (special controls and general controls) or class I (general controls).

Although combination products retain the regulatory identities of their constituent parts, the FD&C Act also recognizes combination products as a category of products that are distinct from products that are solely drugs, devices, or biological products, and that could be subject to specialized regulatory controls. See, e.g., section 503(g)(4)(A) of the FD&C Act (21 U.S.C. 353(g)(4)(A)) and section 563(a) of the FD&C Act (21 U.S.C. 360bbb–2(a)).

In addition, section 701(a) of the FD&C Act (21 U.S.C. 371(a)) provides authority to issue regulations for the efficient enforcement of the FD&C Act. This includes the authority to develop regulations to ensure sufficient and appropriate ongoing assessment of the risks associated with devices and combination products.

III. Proposed Revisions

FDASIA changed the procedures for reclassification of devices under section 513(e) of the FD&C Act, and for requiring PMAs for preamendments class III devices from notice and comment rulemaking under section 553 of the Administrative Procedure Act to an administrative order process. FDA is proposing these revisions to update its regulations to reflect these and other changes, and to ensure classification of devices in the lowest regulatory class consistent with the protection of the public health and the statutory scheme for device regulation.

A. Proposed Amendments to 21 CFR 860.3—Definitions

This section provides the key definitions for part 860. FDA proposes to amend § 860.3 to remove the paragraph designations and to list the definitions alphabetically. This proposed amendment would simplify adding any new definitions to this part. FDA is also proposing to change the term from ''life-supporting or life-sustaining device'' to the term ''supporting or sustaining human life'' to conform to the language of section 513 of the FD&C Act.

1. Definitions of Class I, II, and III

FDA proposes to amend the definitions of class I, class II, and class III by revising the definitions to reflect a key principle underlying device classification, namely, that a reasonable assurance of safety and effectiveness is necessary for all three device classes; however, the level of regulation necessary to provide such assurance should be closely tailored to the risk presented by a type of device. Explanatory language about general and special controls has been removed from the definitions of class I and II, respectively, to avoid repetition with the new proposed definitions for the terms ''general controls'' and ''special controls''. Other minor changes are intended to improve the clarity and structure of these definitions.

FDA is also proposing changes to the definition of class III to provide greater clarity regarding which devices fall within this class, and to improve transparency and predictability in device classification and reclassification decisions. Section 513(a)(1)(C) of the FD&C Act provides a definition for class III devices.

An important aspect of this definition is that FDA must first determine that a device falls into one of the three categories that make the device potentially high risk to be eligible to be classified by FDA in class III because the FD&C Act explicitly reserves class III to devices that are intended for use in supporting or sustaining human life, of substantial importance in preventing impairment of health, or that present a potential unreasonable risk of illness or injury. The proposed definition retains this concept, reserving class III for devices that present heightened potential risks because they fall into one of three statutory categories. As a shorthand, this preamble will refer to devices described by section 513(a)(1)(C)(ii) of the FD&C Act as potentially high risk devices, although in some cases, such devices may be known to be high risk. Importantly, the proposed definition of class III refers to the initial statutory classification of postamendment (21 U.S.C. 360c(f)) and transitional devices (21 U.S.C. 360j(l)(1)) to make clear that such devices are placed into class III automatically, rather than by operation of the definition of class III at section 513(a)(1)(C) of the FD&C Act. Thus, the second part of the proposed definition of class III (under paragraph (b)) will apply to initial classification of preamendments devices and reclassification decisions for a type of device, but will not control classification decisions FDA renders in reviewing a premarket notification under section 510(k) of the FD&C Act.

The current regulatory definition closely tracks the statute, but it does not further explain the key statutory concept that determines which potentially high risk devices will be classified in class III—namely, the concept of when insufficient information exists to determine that general and special controls would provide RASE. FDA's experience has shown that different stakeholders interpret this language differently. In some instances, FDA's stakeholders have suggested that premarket and postmarket controls typically associated with class III devices, such as requiring clinical trials to provide an independent assessment of the safety and effectiveness of a device, can be established as special controls. In other instances, FDA's stakeholders have suggested that all high risk devices should be classified in class III, even if those risks are well understood and may be able to be controlled through premarket studies showing equivalence to a marketed device, labeling, and other general or special controls.

To address the need for greater clarity and promote consistent expectations about device classification, FDA is proposing to identify those potentially high risk devices for which insufficient information exists to determine that special and general controls would provide RASE. Under section 513(a)(2)(C) of the FD&C Act, the safety and effectiveness of a device are determined by evaluating its risks and benefits; thus, after FDA has determined a device is potentially high risk, FDA must still determine the risks, benefits, and appropriate regulatory controls to determine whether the device should be classified into class III. The proposed regulation would identify five categories of devices for classification into class III based on the risks, benefits, and available controls for the three device classes:

Devices that present known risks that cannot be controlled. This category encompasses devices that have a favorable benefit- risk profile even though they present significant risks that cannot be adequately controlled through general and special controls. Because special controls cannot fully address the risks presented, the highest level of regulation is necessary to minimize those risks.

Devices for which the risk-benefit profile is unknown or unfavorable. For most devices that enter the market each year after premarket review by FDA, FDA evaluates the safety and effectiveness of the device—and its risks and benefits—by determining in the context of the review of a premarket notification under section 510(k) of the FD&C Act whether the device is substantially equivalent to a legally marketed predicate device; thus, FDA assesses safety and effectiveness through a comparison to a predicate. FDA believes comparison to a predicate device is appropriate for the overwhelming majority of devices subject to premarket review, including many devices that are intended for use in supporting or sustaining human life, of substantial importance in preventing impairment of health, or that present a potential unreasonable risk of illness or injury.

For certain potentially high risk technologies, however, the risks or benefits may not be sufficiently well understood to allow meaningful comparison of a device to a predicate device. If the risks and benefits of a device are unknown, FDA may be unable to identify the performance parameters relevant to risks and benefits that would allow FDA to assess safety and effectiveness through a comparison to a predicate. On the other hand, if FDA does have information concerning the risks and/or benefits of a type of device, but the known benefits do not justify the known risks, there cannot be sufficient information to determine that general controls and special controls are sufficient to provide RASE, unless the applicant provides additional valid scientific evidence independently establishing a favorable benefit/risk profile for the device. The proposed rule would provide clear language classifying into class III potentially high risk devices for which the risk/benefit profile is unknown or unfavorable.

Devices for which a full review of manufacturing information is necessary. Even when the risk/benefit profile of a device is well-established, for certain potentially high risk devices, the risks may be of a type or degree that can only be adequately addressed by relatively stringent controls. Among the relatively stringent controls applied to class III devices are, in addition to the requirement for approval of an application containing valid scientific evidence independently establishing RASE for the device, the requirement to provide full manufacturing information about a device for FDA review before it may enter the market. FDA may be aware, for example, from experience with a particular device type, that certain aspects of the manufacturing process are critical to the safety or effectiveness of the device, which makes

review of the manufacturing process necessary prior to marketing.

Because the statutory provision concerning special controls provides only an illustrative list of controls, leaving open the possibility other controls could be available as special controls, FDA believes it is important to identify those controls that are appropriate only for class III devices. FDA believes the flexibility provided by the statutory definition of special controls—and retained in the proposed regulatory definition—is appropriate and facilitates the goal of regulating device classes in the lowest regulatory class consistent with the protection of the public health. FDA also believes, however, that the statutory classification scheme contemplates that certain regulatory controls are appropriately reserved to class III devices subject to approval under section 515 of the FD&C Act. For example, section 515(c) of the FD&C Act specifically provides that a PMA is to include a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and, when relevant, packing and installation, of [a] device. This provision is in stark contrast to section 513(i) of the FD&C Act, which limits FDA's review of a premarket notification to a review of the intended use and technology of a device. In addition, section 513(f)(5), provides that FDA may not withhold a determination of the initial classification of a device under section 513(f)(1) because of a failure to comply with any provision of this chapter unrelated to a substantial equivalence decision, including a finding that the facility in which the device is manufactured is not in compliance with good manufacturing requirements as set forth in regulations of the Secretary under section 360j(f) of this title (other than a finding that there is a substantial likelihood that the failure to comply with such regulations will potentially present a serious risk to human health).

Differences in the types of information FDA reviews in 510(k)s and PMAs correspond to different review timeframes for these two application types; indeed, on the rare occasions that FDA has required a manufacturing inspection before clearance of a premarket notification for a device, FDA has found scheduling the inspection within the 90-day statutory timeframe for 510(k)s challenging. For all of these reasons, when a review of a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and, when relevant, packing and installation, of a device is necessary to provide RASE for a potentially high risk device, general and special controls are inadequate to provide RASE and the device thus meets the statutory definition of class III.

Devices for which premarket review of any change affecting safety or effectiveness is necessary. Similarly, when approval of a premarket submission for any change to a device that affects safety or effectiveness is necessary to provide RASE, general and special controls are insufficient to provide RASE, and classification in class III is necessary. Section 515(d)(6) of the FD&C Act provides explicit authority to require premarket approval of a supplemental application for any change to an approved device that affects safety or effectiveness (with the exception of changes to certain manufacturing methods or procedures, for which a notice to FDA must be submitted 30 days prior to implementation). FDA considers this to be a regulatory control reserved for class III devices. For higher risk devices with unique design characteristics or manufacturing processes, it is essential for FDA to assess any change that affects safety or effectiveness premarket to ensure that RASE is maintained, for example because of the cumulative impact that multiple changes may have on the safety or effectiveness of the device over time. FDA proposes that devices for which premarket review of any change that affects safety or effectiveness is necessary to provide RASE be classified in class III.

Combination products. The last proposed category of class III devices are devices that provide the primary mode of action for combination products that include a drug constituent part for which a finding is required that the drug constituent part be safe and effective, or include a biological product constituent part for which a finding is required that the biological product constituent part be safe, pure, and potent, and such a finding has not been made. Accordingly, the proposed rule would classify such devices in class III, subject to premarket approval.

2. Other Definitions

FDA proposes to amend the definition of generic type of device to address confusion about the inter-relationship among product code (procode), generic type, and classification regulation. In general, these represent levels of device categorization, with the lowest range of differences at the procode level and the highest range of differences at the classification regulation level, though sometimes the levels are coextensive. The terms ''device,'' ''device type,'' and ''generic device type'' are often used in the FD&C Act and implementing regulations interchangeably. As explained in the guidance entitled ''Medical Device Classification Product Codes—Guidance for Industry and Food and Drug Administration Staff,'' CDRH assigns three letter ''procodes'' to devices to group and track them for various purposes. FDA proposes to amend the definition of ''generic type of device'' to make clear that a generic type may include one or more procodes, and a single classification regulation may include one or more generic types of device and may even, in some instances, straddle device classes.

FDA proposes to remove the definitions for classification questionnaire and supplemental data sheet because FDA is proposing to remove the requirement that this form be included as part of the reclassification procedures under § 860.84 and a reclassification petition under § 860.123. FDA believes the proposed definitions, when finalized, will clarify the classification criteria for panels, FDA, and all stakeholders and thus obviate the need for this form.

FDA proposes to add a definition of general controls for medical devices that harmonizes with the definition in section 513(a)(1)(A) of the FD&C Act. While explanations of general controls have been provided in guidance, adding the definition to this regulation will provide another opportunity to clarify which controls are included as general controls.

FDA proposes to replace the term ''implant'' with the term ''implantable device,'' which FDA proposes to have the same definition as ''implant.''

FDA proposes to add a definition of special controls to clarify the regulatory significance of special controls as the controls necessary to provide RASE for a type of device classified in class II, which must be met for a device to be in class II.

FDA proposes to add a definition of ''special controls guideline.'' Under section 513(a) of the FD&C Act, a special controls guideline is a means for providing RASE for a class II device. While the guideline establishes a mandatory level of regulatory controls that must be met for the device to be in class II, manufacturers may comply with the guideline either by following the particular controls described in the guideline or by using alternative mitigation measures but demonstrating to the Agency's satisfaction that those alternative measures provide the same or greater level of assurance of safety and effectiveness.

B. Proposed Amendments to 21 CFR 860.7—Determination of Safety and Effectiveness

This section provides the relevant factors FDA and classification panels will consider in reviewing evidence of device safety and effectiveness. The proposed provision clarifies class II classification or reclassification requirements for safety and effectiveness. FDA proposes to amend § 860.7(b) and (g)(1) to include establishment of special controls for class II devices, replacing the term performance standards because special controls include performance standards. Under section 513(a)(1)(B) of the FD&C Act, special controls includes the issuance of performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines (including guidelines for the submission of clinical data in premarket notification of submissions in accordance with section 510(k)), recommendations and other appropriate actions as the FDA deems necessary to provide such assurance.

FDA is proposing additional minor changes in paragraphs § 860.7(c)(2) and (d)(2) to update terminology and to reflect changes in the FD&C Act.

C. Proposed Amendments to 21 CFR Part 860.84—Classification Procedures for ''Preamendments Devices''

This section explains the procedures and criteria for original classification of preamendments devices. FDA proposes to amend § 860.84 by removing the term ''old devices'' as a reference to medical devices in commercial distribution before May 28, 1976. The terminology FDA more commonly uses is ''preamendments devices.'' May 28, 1976, is the date of enactment of the Medical Device Amendments of 1976.

FDA further proposes removing the requirement to answer the classification questionnaire and provide information using the supplemental data sheet. The classification questionnaire provides recommendations and information for FDA to consider during the classification process. The supplemental data sheet is information compiled by a classification panel or submitted in a petition for reclassification. As FDA has gained experience with the classification processes, questions concerning the utility of the classification questionnaire and supplemental data sheet have arisen. FDA believes that a more efficient use of FDA and petitioner resources would be to focus on the information the petitioner provides concerning review of available valid scientific evidence, appropriate regulatory controls given the risks presented by the device, and regulatory standards to understand whether general controls are sufficient to provide RASE or whether general controls and special controls are sufficient to provide RASE.

FDA proposes to amend § 860.84(d)(5) and (g)(2) to include establishment of special controls for class II devices. ''Special controls'' is the more inclusive term. Under section 513(a)(1)(B) of the FD&C Act, special controls includes the issuance of performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines (including guidelines for the submission of clinical data in premarket notification of submissions in accordance with section 510(k)), recommendations, and other appropriate actions as the FDA deems necessary to provide such assurance.

FDA proposes additional minor changes to § 860.84(a), (d)(4), (d)(6), (e), and (g)(3) to reflect the changes in the FD&C Act and to update terminology.

D. Proposed New 21 CFR 860.90—Consultation With Panels

FDA proposes to add a new section to explain how FDA consults with panels regarding classification of preamendments devices. This provision for the most part mirrors § 860.125, which outlines the means by which FDA consults with panels for reclassifications.

E. Proposed Amendments to 21 CFR 860.93—Classification of Implantable Devices and Devices Intended for a Use in Supporting or Sustaining Human Life

This section explains the special requirements for classifying any implantable device or device intended for a use in supporting or sustaining human life. FDA proposes to replace the term ''implant'' with the newly proposed term ''implantable device'' throughout this section. We also propose to add clarifying provisions that any class II classification recommendation for any implantable device or device intended for a use in supporting or sustaining human life from a classification device panel must identify and describe any special controls that are necessary to provide RASE. For any implantable device or device intended for a use in supporting or sustaining human life the Commissioner of Food and Drugs classifies or reclassifies into class II, the Commissioner must identify and describe any special controls that are necessary to provide RASE.

F. Proposed Amendments to 21 CFR 860.95—Exemptions From Sections 510, 519, and 520(f) of the FD&C Act

This section discusses exemptions from registration, product listing, and premarket notification in section 510 of the FD&C Act, records and reports in section 519 of the FD&C Act (21 U.S.C. 360i), and good manufacturing practice requirements in section 520(f) of the FD&C Act. FDA proposes additional changes to paragraphs § 860.95(a) and (b) to reflect changes in the FD&C Act that a class II device may be exempted from the premarket notification requirements if premarket notification is not necessary to assure the safety and effectiveness of the device.

G. Proposed Amendments to 21 CFR 860.120—General

This section explains the criteria for reclassifying medical devices under sections 513(e), 513(f), 514(b) (21 U.S.C. 360d(b)), 515(b), and 520(*l*) of the FD&C Act. FDA proposes to remove the term ''substantial equivalence'' in § 860.120(b) to clarify that reclassifying one device within a generic type of device reclassifies all devices within a generic type of device. As clarified in the proposed amendment to the definition of ''generic type of device,'' a classification may include more than one generic type. Thus a reclassification may reclassify all of the devices within a classification (either because a classification only includes one generic type or because FDA has decided to reclassify more than one generic type) or only one or more generic types within a classification. FDA proposes to revise § 860.120(c) to clarify that the Commissioner may reclassify class I, class II, and class III devices into any of the other of the three classes and to add provisions that list the sections of the FD&C Act under which the Commissioner may initiate reclassification of a medical device.

H. Proposed Amendments to 21 CFR 860.123—Reclassification Petition: Content and Form

This section provides the form and content of reclassification petitions. FDA proposes to remove the requirement to include in a reclassification petition a completed classification questionnaire and supplemental data sheet. The classification questionnaire provides recommendations and information for FDA to consider during the classification process. The supplemental data sheet is information compiled by a classification panel or submitted in a petition for reclassification. As FDA has

gained experience with the classification processes, questions concerning the utility of the classification questionnaire and supplemental data sheet have arisen. FDA believes that a more efficient use of FDA and petitioner resources would be to focus on the information the petitioner provides concerning review of available valid scientific evidence, appropriate regulatory controls given the risks presented by the device, and regulatory standards to understand whether general controls are sufficient to provide RASE or whether general controls and special controls are sufficient to provide a reasonable assurance of safety and effectiveness.

In paragraph § 860.123(b)(2), FDA proposes to clarify a reference to section 513(f) in the FD&C Act to the more specific section 513(f)(3).

I. Proposed Amendments to 21 CFR 860.125—Consultation With Panels

This section provides the procedures under which FDA's Commissioner consults with classification panels in the context of reclassification. FDA proposes to add language to clarify when consultation with a panel is required and when consultation is optional. In particular, FDA proposes to add language to § 860.125(c) to reflect the FDASIA change that requires FDA to convene a classification panel meeting prior to reclassifying a device under section 513(e) of the FD&C Act.

J. Proposed Amendments to 21 CFR 860.130—General Procedures Under Section 513(e) of the FD&C Act

This section provides the procedures for reclassifying a device based on new information under section 513(e) of the FD&C Act. FDA proposes to revise the procedure in § 860.130(c) to reflect the FDASIA requirement that devices reclassified under section 513(e) of the FD&C Act be reclassified using an administrative order procedure. FDA also proposes to add language to clarify that the Commissioner may reclassify class I, class II, and class III devices into any of the other of the three classes under the criteria set forth in § 860.3 for each class of device.

In § 860.130(d) FDA proposes revisions to reflect the FDASIA process that FDA will use to reclassify a device under section 513(e) of the FD&C Act. Prior to the publication of a final order, FDA must also publish a proposed order in the **Federal Register** and consider any comments submitted on the proposed order. FDA must, in addition, hold a device classification panel meeting (21 U.S.C. 360c(b)). The panel meeting must occur before the final order is published, and may occur either before or after the proposed order is published. The proposed order must include the following: (1) A substantive summary of valid scientific evidence, including the public health benefits and risks of the device; (2) when reclassifying from class II to class III, an explanation that general and special controls are insufficient to reasonably assure safety and effectiveness; and (3) when reclassifying from class III to class II an explanation that general and special controls are sufficient to reasonably assure safety and effectiveness.

FDA proposes revisions to § 860.130 (f) and (g) to reflect the change to an administrative order process. FDA further proposes to revise § 860.130(g) to reflect that the administrative order may establish special controls to provide RASE of the device.

K. Proposed Amendments to 21 CFR 860.132—Procedures When the Commissioner Initiates a Performance Standard or Premarket Approval Proceeding Under Sections 514(b) or 515(b) of the FD&C Act

This section explains the procedures for an interested person to request reclassification of a device after FDA initiates a proceeding for the establishment of a performance standard or for requiring premarket approval. FDA proposes removing premarket approval proceedings from the process currently outlined in § 860.132(b) since the corresponding statutory requirement was removed by FDASIA (pre-FDASIA section 515(b)(2)(B)) of the FD&C Act). Instead, FDA proposes new § 860.132(b) and (c), providing that reclassification requests received during premarket approval proceedings will either be denied, if FDA does not agree that a change in classification is warranted, or granted, in which case FDA will follow the reclassification process under section 513(e) of the FD&C Act.

FDA proposes new § 860.132(d) for requests for reclassification during a performance standard proceeding, the process for which would remain largely unchanged. FDA proposes to remove the requirement in current § 860.132(b)(3) that a grant or denial of a petition to reclassify a device must be by order published in the **Federal Register**. Publishing the administrative order in the **Federal Register** is not required by statute and adds an unnecessary step to the process. FDA proposes to extend the time for filing a petition for reclassification in § 860.132(b)(1) to 30 days.

L. Proposed Addition of 21 CFR 860.133—Procedures When the Commissioner Initiates a Proceeding to Require Premarket Approval Under Section 515(b) of the FD&C Act

FDA proposes to add § 860.133 to describe the process for requiring the filing of a PMA for class III preamendments devices under section 515(b) of the FD&C Act (also referred to as a ''call for PMAs''). FDASIA changes the process that FDA uses to require the filing of PMAs or completion of PDPs from a rulemaking process to an administrative order process. Under proposed § 860.133(b), a final order will include any recommendation to the Commissioner from a classification panel regarding the classification. Prior to the publication of a final order, FDA must also publish a proposed order in the **Federal Register** and consider any comments submitted on the proposed order. FDA must, in addition, hold a device classification panel meeting (21 U.S.C. 360c(b)). The panel meeting must occur before the final order is published, and may occur either before or after the proposed order is published. The proposed order must include the following: (1) A substantive summary of valid scientific evidence, including the public health benefits and risks of the device; (2) when reclassifying from class II to class III, an explanation that general and special controls are insufficient to reasonably assure safety and effectiveness; and (3) when reclassifying from class III to class II an explanation that general and special controls are sufficient to reasonably assure safety and effectiveness.

M. Proposed Amendments to 21 CFR 860.134—Procedures for ''Postamendment Devices'' Under Section 513(f)(3) of the FD&C Act and Reclassification of Certain Devices

This section explains the procedures for reclassifying postamendments devices that are class III by operation of section 513(f)(1) of the FD&C Act. FDA proposes to amend § 860.134 by removing the term ''new devices'' as a reference to medical devices in commercial distribution after May 28, 1976. The terminology FDA more commonly uses is ''postamendment devices.'' May 28, 1976, is the date of enactment of the Medical Device Amendments of 1976. FDA further proposes to clarify a reference to section 513(f) in the FD&C Act to the more specific section 513(f)(3) and to add a reference to ''de novo'' classification under section 513(f)(2) to § 860.134(a) to reflect a change made by FDASIA to section 513(f)(1).

FDA proposes to add new § 860.134(c), detailing the process where reclassification is initiated by FDA rather than a petition. This process would consist of a proposed reclassification order, optional panel consultation, and a final reclassification order published in the **Federal Register** following consideration of comments and any panel recommendations or comments. FDA further proposes to add new paragraph 860.134(d) to reflect that the administrative order may establish special controls to provide RASE of the device.

N. Proposed Amendments to 21 CFR 860.136—Procedures for Transitional Products Under Section 520(l) of the FD&C Act

FDA proposes to revise § 860.136(a) to add reclassification initiated by FDA and proposes to revise § 860.136(b) to apply to reclassification initiated by manufacturer or importer.

FDA proposes to add new § 860.136(c), detailing the process where reclassification is initiated by FDA rather than a petition. This process would consist of a proposed reclassification order, optional panel consultation, and a final reclassification order published in the **Federal Register** following consideration of comments and any panel recommendations or comments. The proposed amendments to § 860.136 also include provisions making clear that reclassification orders under this section may establish special controls for a device reclassified into class II to provide RASE of the device. FDA also proposes to remove the requirement for a part 16 hearing because we believe the process providing for a proposed order, panel consultation, consideration of comments, and final order provide sufficient opportunity for participation and review of reclassifications of transitional devices.

IV. Environmental Impact

The Agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

A. Introduction

FDA has examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all 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, and other advantages; distributive impacts; and equity). The Agency believes that this proposed rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule imposes no significant new burdens, the Agency proposes to certify that the final rule would not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $141 million, using the most current (2012) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

B. Summary

The reclassification process provides manufacturers a pathway to reclassify medical devices (e.g., reclassify from class III to class II). Although the process is intended to be straightforward, FDA has found that certain aspects of it lack clarity and as a result petitions have been submitted for devices that are not suitable candidates for reclassification. To make the process clearer, the rule proposes the following changes: (1) Removing repetitive sentences in the regulatory language; (2) using definitions that are consistent with the current statutory language; (3) and adding clarity to the definition of class III devices, which would make it more clear which devices currently regulated in class III are not suitable for down-classification.

Adopting the proposed rule is expected to impose a modest net monetized benefit (estimated benefits minus estimated costs) on society. Benefits are attributed to making the reclassification process clearer, which would reduce the costs associated with preparing and reviewing reclassification petitions. We estimate annual benefits to roughly range from $1,535 to $2,880 per year. Using a 20-year time period, we estimate present discounted benefits to range between $22,837 to $42,847 at a 3 percent discount rate and $16,262 to $30,511 at a 7 percent discount rate.

FDA also examined the economic implications of the final rule as required by the Regulatory Flexibility Act. If a rule will have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires Agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities. This proposed rule would impose no new burdens on small entities, and thus would not impose a significant economic impact on a substantial number of small entities.

VI. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule, if finalized, would not contain policies that would 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. Accordingly, the Agency tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VII. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). A description of these provisions is given in the ''Description'' section of this document with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on the following topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility;

(2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Reclassification Petitions for Medical Devices

Description: This proposed rule would eliminate the requirement for petitioners to complete Form FDA 3429 (Classification Questionnaire) and Form FDA 3427 (Supplemental Data Sheet).

Description of Respondents: The reporting requirements referenced in this document are imposed on any person petitioning for reclassification of a preamendments device and any manufacturer or importer of the device petitioning for reclassification of a postamendments or transitional device.

Requirements Reflected in the Burden Estimates: FDA has identified the following requirements as having burdens that must be accounted for under the PRA; the burdens associated with these requirements are summarized in the tables that follow:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
860.123 Supporting data for reclassification	6	1	6	497	2,982

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Section 860.123 is being amended to eliminate the requirement for petitioners to complete Form FDA 3429 (Classification Questionnaire) and Form FDA 3427 (Supplemental Data Sheet).

Based on current trends, FDA anticipates that six petitions will be submitted each year. The time required to prepare and submit a reclassification petition, including the time needed to assemble supporting data and to prepare the form, averages 497 hours per petition. This average is based upon estimates by FDA administrative and technical staff who are familiar with the requirements for submission of a reclassification petition, have consulted and advised manufacturers on these requirements, and have reviewed the documentation submitted.

This proposed rule also refers to previously approved collections of information found in FDA regulations. The collections of information in § 860.123 have been approved under OMB control number 0910–0138.

To ensure that comments on these revised information collection requirements are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the title ''Reclassification Petitions for Medical Devices.'' In compliance with the PRA (44 U.S.C. 3507(d)), the Agency has submitted the information collection provisions of this proposed rule to OMB for review. These requirements will not be effective until FDA obtains OMB approval. FDA will publish a notice concerning OMB approval of these requirements in the **Federal Register**.

VIII. Proposed Effective Date

FDA is proposing that any final rule based on this proposal become effective 90 days after date of publication of a final rule in the **Federal Register** or at a later date if stated in the final rule.

IX. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to submit one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

List of Subjects in 21 CFR Part 860

Administrative practice and procedure, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 860 be amended as follows:

PART 860—MEDICAL DEVICE CLASSIFICATION PROCEDURES

■ 1. The authority citation for 21 CFR part 860 continues to read as follows:

Authority: 21 U.S.C. 360c, 360d, 360e, 360i, 360j, 371, 374.

■ 2. Section 860.3 is revised to read as follows:

§ 860.3 Definitions.

For the purposes of this part:

Act means the Federal Food, Drug, and Cosmetic Act.

Class means one of the three categories of regulatory controls for medical devices. Class I, class II, and class III are defined below.

Class I means the class of devices that are subject to only the general controls of the Federal Food, Drug, and Cosmetic Act. A device is in class I if:

(1) General controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device, or

(2) There is insufficient information from which to determine that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the device or to establish special controls to provide such assurance, but the device:

(i) Is not intended for a use in supporting or sustaining human life;

(ii) Is not intended for a use that is of substantial importance in preventing impairment of human health; and

(iii) Does not present a potential unreasonable risk of illness or injury.

Class II means the class of devices for which general controls alone are insufficient to provide reasonable assurance of safety and effectiveness and for which sufficient information exists to establish special controls to provide such assurance. For a device that is intended for a use in supporting or sustaining human life, the Commissioner shall examine and establish the special controls, if any, that are necessary to provide a reasonable assurance of safety and effectiveness and describe how such controls provide such assurance.

Class III means the class of devices for which premarket approval is or will be

required in accordance with section 515 of the Federal Food, Drug, and Cosmetic Act.

(1) A device is in class III:

(i) If so classified by the Federal Food, Drug, and Cosmetic Act under section 513(f)(1) or section 520(l)(1); or

(ii) If the device:

(A) Is intended for a use in supporting or sustaining human life, or

(B) Is intended for a use that is of substantial importance in preventing impairment of human health, or

(C) Presents a potential unreasonable risk of illness or injury; and

(D) Insufficient information exists to determine that general controls and/or special controls are sufficient to provide reasonable assurance of safety and effectiveness.

(2) The Commissioner may find that there is insufficient information to determine that general controls and/or special controls are sufficient to provide reasonable assurance of a device's safety and effectiveness. For example, the Commissioner may make this finding when any of the following apply:

(i) The device presents known risks that cannot be adequately controlled by general and special controls;

(ii) Evaluation under section 513(i) of the Federal Food, Drug, and Cosmetic Act is not adequate to establish that the benefit to health from use of the device justifies the risk of illness or injury from use of the device because:

(A) The benefits of the device are unknown;

(B) The risks of the device are unknown; or

(C) The known benefits do not justify the known risks;

(iii) Review of a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and, when relevant, packing and installation of, each device within the generic type is necessary to provide a reasonable assurance of safety and effectiveness;

(iv) Review of a supplemental application in accordance with section 515(d)(6) of the Federal Food, Drug, and Cosmetic Act for any change to the device that affects safety or effectiveness is necessary to provide a reasonable assurance of safety and effectiveness; or

(v) The device is part of a combination product as defined in section 3.2(e) of this chapter, the device constituent part provides the primary mode of action under section 503(g) of the Federal Food, Drug, and Cosmetic Act and part 3 of this chapter, and a finding is required that the drug constituent part be safe and effective or that the biological product constituent part be safe, pure, and potent, but such a finding has not been made.

Classification panel means one of the advisory committees established by the Commissioner under section 513 of the Federal Food, Drug, and Cosmetic Act and part 14 of this chapter for the purpose of making recommendations to the Commissioner on the classification and reclassification of devices and for other purposes prescribed by the Federal Food, Drug, and Cosmetic Act or by the Commissioner.

Commissioner means the Commissioner of Food and Drugs, Food and Drug Administration, United States Department of Health and Human Services, or the Commissioner's designee.

General controls mean the controls authorized by or under sections 501 (adulteration), 502 (misbranding), 510 (registration, listing, premarket notification, etc.), 516 (banned devices), 518 (notification and other remedies), 519 (records, reports, and unique device identification) and 520 (general provisions) of the Federal Food, Drug, and Cosmetic Act.

Generic type of device means a grouping of devices that do not differ significantly in purpose, design, materials, energy source, function, or any other feature related to safety and effectiveness, and for which similar regulatory controls are sufficient to provide reasonable assurance of safety and effectiveness. Devices within a generic type of device are sometimes, but not always, grouped together under the same product code. Devices within a single classification sometimes, but not always, form a generic type of device.

Implantable device means a device that is intended to be placed in a surgically or naturally formed cavity of the human body. A device is regarded as an implantable device for the purpose of this part only if it is intended to remain implanted continuously for a period of 30 days or more, unless the Commissioner determines otherwise in order to protect human health.

Petition means a submission seeking reclassification of a device in accordance with § 860.123.

Special controls mean the controls necessary to provide a reasonable assurance of safety and effectiveness for a generic type of device within class II and that must be met to establish and maintain classification within the generic type. Special controls can include a wide variety of regulatory controls necessary to provide reasonable assurance of the safety and effectiveness of the device, such as the promulgation of performance standards, postmarket surveillance, patient registries, development and dissemination of guidelines (including guidelines for the submission of clinical data in premarket notification submissions in accordance with section 510(k) of the Federal Food, Drug, and Cosmetic Act), recommendations, and other appropriate actions as the Commissioner deems necessary to provide such assurance.

Special controls guideline is a type of document referenced in the codified text of the applicable classification regulation that establishes the special controls necessary to provide a reasonable assurance of safety and effectiveness for a generic type of class II device, such as the type and level of data (clinical or other performance data) to be included in premarket notification submissions, labeling, postmarket reporting, and/or other controls. Special controls guidelines establish a mandatory level of regulatory control, but permit flexibility in how to meet the level of control necessary to provide a reasonable assurance of safety and effectiveness. A manufacturer of a device subject to a special controls guideline must comply with the guideline, in order for the device to be in class II, by complying with the particular mitigation measures described in the guideline or by using alternative mitigation measures but demonstrating to the Agency's satisfaction that those alternative measures provide at least an equivalent assurance of safety and effectiveness.

Supporting or sustaining human life means essential to, or yields information that is essential to, the restoration or continuation of a bodily function important to the continuation of human life.

■ 3. Section 860.7 is amended by revising paragraph (b) introductory text, the last sentence in paragraph (c)(2), paragraph (d)(2), and the last sentence in paragraph (g)(1) to read as follows:

§ 860.7 Determination of safety and effectiveness.

* * * * *

(b) In determining the safety and effectiveness of a device for purposes of classification, establishment of special controls for class II devices, and premarket approval of class III devices, the Commissioner and the classification panels will consider the following, among other relevant factors:

* * * * *

(c) * * *

(2) * * * Such information may be considered, however, in identifying a device with questionable safety or effectiveness.

(d) * * *

(2) Among the types of evidence that may be required, when appropriate, to determine that there is reasonable assurance that a device is safe are investigations using laboratory animals, investigations involving human subjects, and nonclinical investigations, and analytical studies for in vitro diagnostic devices.

* * * * *

(g)(1) * * * The failure of a manufacturer or importer of a device to present to the Food and Drug Administration adequate, valid scientific evidence showing that there is reasonable assurance of the safety and effectiveness of the device, if regulated by general controls alone, or by general controls and special controls, may support a determination that the device be classified into class III.

* * * * *

■ 4. Section 860.84 is amended by revising the section heading and paragraph (a), removing paragraphs (c)(3) and (4), redesignating paragraph (c)(5) as paragraph (c)(3), and revising paragraphs (d)(2), (d)(4) through (6), (e), and (g)(2) and (3).

The revisions read as follows:

§ 860.84 Classification procedures for ''preamendments devices.''

(a) This subpart sets forth the procedures for the original classification of a generic type of device that was in commercial distribution before May 28, 1976. Such a device will be classified by regulation into either class I (general controls), class II (special controls) or class III (premarket approval), depending upon the level of regulatory control required to provide reasonable assurance of the safety and effectiveness of the device (§ 860.3). This subpart does not apply to a device that is classified into class III by statute under section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act because the Food and Drug Administration has determined that the device is not ''substantially equivalent'' to any device subject to this subpart or under section 520(*l*)(1) of the Federal Food, Drug, and Cosmetic Act because the device was regarded previously as a new drug. In classifying a device under this section, the Food and Drug Administration will follow the procedures described in paragraphs (b) through (g) of this section.

* * * * *

(d) * * *

(2) A summary of the data upon which the recommendation is based;

* * * * *

(4) In the case of a recommendation for classification into class I, a recommendation as to whether the device should be exempt from the requirements of one or more of the following sections of the Federal Food, Drug, and Cosmetic Act: section 510 (registration, product listing, and premarket notification), section 519 (records and reports) and section 520(f) (good manufacturing practice requirements of the quality system regulation) in accordance with § 860.95, and, in the case of a recommendation for classification into class II, whether the device should be exempted from the premarket notification requirement under section 510;

(5) In the case of a recommendation for classification into class II or class III, to the extent practicable, a recommendation for the assignment to the device of a priority for the application of a performance standard or a premarket approval requirement, and in the case of classification into class II, a recommendation on the establishment of special controls and whether the device should be exempted from premarket notification;

(6) In the case of a recommendation for classification of an implantable device or a device intended for a use in supporting or sustaining human life into class I or class II, a statement of why premarket approval is not necessary to provide reasonable assurance of the safety and effectiveness of the device, accompanied by references to supporting documentation and data satisfying the requirements of § 860.7, and an identification of the risks to health, if any, presented by the device.

(e) A panel recommendation is regarded as preliminary until the Commissioner has reviewed it, discussed it with the panel if appropriate, and published a proposed regulation classifying the device. Preliminary panel recommendations are filed in the Division of Dockets Management's office upon receipt and are available to the public and posted on FDA's Web site at *http://www.regulations.gov.*

* * * * *

(g) * * *

(2) If classifying the device into class II, establish the special controls for the device and prescribe whether the premarket notification requirement will apply to the device;

(3) If classifying an implantable device, or a device intended for a use in supporting or sustaining human life, comply with § 860.93(b).

■ 5. Section 860.90 is added to read as follows:

§ 860.90 Consultation with panels.

(a) When the Commissioner is required to consult with a panel concerning a classification under § 860.84, the Commissioner will consult with the panel in one of the following ways:

(1) Consultation by telephone with at least a majority of current voting panel members and, when possible, nonvoting panel members; or

(2) Discussion at a panel meeting.

(b) The method of consultation chosen by the Commissioner will depend upon the importance and complexity of the subject matter involved and the time available for action. When time and circumstances permit, the Commissioner will consult with a panel through discussion at a panel meeting.

■ 6. Revise § 860.93 to read as follows:

§ 860.93 Classification of implantable devices and devices intended for a use in supporting or sustaining human life.

(a) A classification panel will recommend classification into class III of any implantable device or device intended for a use in supporting or sustaining human life unless the panel determines that such classification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. If the panel recommends classification or reclassification of such a device into a class other than class III, it shall set forth in its recommendation the reasons for so doing and an identification of the risks to health, if any, presented by the device. In the case of such a device being recommended for classification or reclassification into class II, the panel shall describe the special controls that, in addition to general controls, are necessary to provide a reasonable assurance of safety and effectiveness of the device and how such controls provide such assurance.

(b) The Commissioner will classify an implantable device or a device intended for a use in supporting or sustaining human life into class III unless the Commissioner determines that such classification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. If the Commissioner proposes to classify or reclassify such a device into a class other than class III, the regulation or order effecting such classification or reclassification will be accompanied by a full statement of the reasons for so doing. A statement of the reasons for not classifying or retaining the device in class III may be in the form of concurrence with the reasons for the recommendation of the classification panel, together with supporting

documentation and data satisfying the requirements of § 860.7 and an identification of the risks to health, if any, presented by the device. In the case of such a device being classified or reclassified into class II, the Commissioner shall describe the special controls that, in addition to general controls, are necessary to provide a reasonable assurance of safety and effectiveness of the device and how such controls provide such assurance.

■ 7. Section 860.95 is amended by revising the section heading and paragraphs (a) and (b) to read as follows:

§ 860.95 Exemptions from sections 510, 519, and 520(f) of the Federal Food, Drug, and Cosmetic Act.

(a) A panel recommendation to the Commissioner that a device be classified or reclassified into class I will include a recommendation as to whether the device should be exempt from some or all of the requirements of one or more of the following sections of the Federal Food, Drug, and Cosmetic Act: Section 510 (registration, product listing, and premarket notification), section 519 (records and reports) and section 520(f) (good manufacturing practice requirements of the quality system regulation), and, in the case of a recommendation for classification into class II, whether the device should be exempted from the premarket notification requirement under section 510.

(b) A regulation or an order classifying or reclassifying a device into class I will specify which requirements, if any, of sections 510, 519, and 520(f) of the Federal Food, Drug, and Cosmetic Act the device is to be exempted from or, in the case of a regulation or an order classifying or reclassifying a device into class II, whether the device is to be exempted from the premarket notification requirement under section 510, together with the reasons for such exemption.

* * * * *

■ 8. Section 860.120 is amended by revising paragraphs (b) and (c) to read as follows:

§ 860.120 General.

* * * * *

(b) The criteria for determining the proper class for a device are set forth in § 860.3. The reclassification of any device within a generic type of device causes the reclassification of all devices within that generic type. Accordingly, a petition for the reclassification of a specific device will be considered a petition for reclassification of all devices within the same generic type.

(c) Any interested person may submit a petition for reclassification under section 513(e), 514(b), or 515(b) of the Federal Food, Drug, and Cosmetic Act. A manufacturer or importer may submit a petition for reclassification under section 513(f) or 520(l) of the Federal Food, Drug, and Cosmetic Act. The Commissioner may initiate the reclassification of a device under the following sections of the Federal Food, Drug, and Cosmetic Act:

(1) Section 513(e) (for a device other than a device classified under section 513(f) or 520(*l*)(1) of the Federal Food, Drug, and Cosmetic Act);

(2) Section 513(f)(3) (for a device classified into class III under section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act); or

(3) Section 520(*l*)(2) (for a device classified into class III under section 520(*l*)(1) of the Federal Food, Drug, and Cosmetic Act).

■ 9. Section 860.123 is amended by removing paragraphs (a)(3) and (4), redesignating paragraphs (a)(5) through (10) as paragraphs (a)(3) through (8), respectively; and revising paragraph (b)(2).

The revision reads as follows:

§ 860.123 Reclassification petition: Content and form.

* * * * *

(b) * * *

(2) Marked clearly with the section of the Federal Food, Drug, and Cosmetic Act under which the petition is being submitted, i.e., ''513(e),'' ''513(f)(3),'' ''514(b),'' ''515(b),'' or ''520(*l*) Petition'';

* * * * *

■ 10. Section 860.125 is amended by revising paragraphs (a) introductory text and (a)(2), redesignating paragraph (c) as paragraph (d) and revising it, and adding a new paragraph (c) to read as follows:

§ 860.125 Consultation with panels.

(a) When the Commissioner chooses to refer a reclassification petition to a classification panel for its recommendation under § 860.134(b), or the Commissioner is required to consult with a panel concerning a reclassification petition under § 860.132(d) or § 860.136, or the Commissioner chooses to consult with a panel with regard to the reclassification of a device initiated by the Commissioner under § 860.134(c) or § 860.136, the Commissioner will distribute a copy of the petition, or its relevant portions, if applicable, to each panel member and will consult with the panel in one of the following ways:

* * * * *

(2) Consultation by mail with at least a majority of current voting panel members and, when possible, nonvoting panel members; or

* * * * *

(c) The Commissioner will consult with a classification panel prior to changing the classification of a device under section 513(e) of the Federal Food, Drug, and Cosmetic Act and § 860.130 upon the Commissioner's own initiative or upon petition of an interested person, and in the latter case, the Commissioner will distribute a copy of the petition, or its relevant portions, to each panel member.

(d) When a petition is submitted under § 860.134 for a postamendments, not substantially equivalent device (''new device''), if the Commissioner chooses to consult with the panel, the Commissioner will obtain a recommendation that includes the information described in § 860.84(d). In consulting with a panel about a petition submitted under § 860.130, § 860.132, or § 860.136, the Commissioner may or may not obtain a formal recommendation.

■ 11. Section 860.130 is amended by revising the section heading and paragraphs (c) through (g) to read as follows:

§ 860.130 General procedures under section 513(e) of the Federal Food, Drug, and Cosmetic Act.

* * * * *

(c) By administrative order published under this section, the Commissioner may change the classification from:

(1) Class I or II to class III if the Commissioner determines that the device meets the criteria set forth in § 860.3 for a class III device; or

(2) Class III or class I to class II if the Commissioner determines that the device meets the criteria set forth in § 860.3 for a class II device; or

(3) Class III or class II to class I if the Commissioner determines that the device meets the criteria set forth in § 860.3 for a class I device.

(d)(1) The Commissioner shall consult with a classification panel and may secure a recommendation with respect to reclassification of a device from a classification panel. The panel will consider reclassification in accordance with the consultation procedures of § 860.125. A recommendation submitted to the Commissioner by the panel will be published in the **Federal Register** when the Commissioner publishes an administrative order under this section.

(2) The Commissioner may change the classification of a device by administrative order published in the **Federal Register** following publication

of a proposed reclassification order in the **Federal Register**, a meeting of a device classification panel described in section 513(b) of the Federal Food, Drug, and Cosmetic Act, and consideration of comments to a public docket. The meeting of a device classification panel may take place at any time before or after the publication of a proposed reclassification order in the **Federal Register**.

(e) Within 180 days after the filing of a petition for reclassification under this section, the Commissioner will either deny the petition by order published in the **Federal Register** or give notice of the intent to initiate a change in the classification of the device.

(f) If a device is reclassified under this section, the administrative order effecting the reclassification may revoke any special control or premarket approval requirement that previously applied to the device but that is no longer applicable because of the change in classification.

(g) An administrative order under this section changing the classification of a device to class II may provide that such classification will not take effect until the effective date of a performance standard for the device established under section 514 of the Federal Food, Drug, and Cosmetic Act or other special controls established under the order. An order under this section changing the classification of a device to class II may also establish the special controls necessary to provide reasonable assurance of the safety and effectiveness of the device.

■ 12. Amend § 860.132 as follows:

■ a. Revise the section heading and paragraph (a);

■ b. Redesignate paragraph (b) as paragraph (d);

■ c. Revise newly redesignated paragraphs (d) introductory text, (d)(1), and (d)(3); and

■ d. Add new paragraph (b) and paragraph (c).

The revisions and additions read as follows:

§ 860.132 Procedures when the Commissioner initiates a performance standard or premarket approval proceeding under section 514(b) or 515(b) of the Federal Food, Drug, and Cosmetic Act.

(a) Sections 514(b) and 515(b) of the Federal Food, Drug, and Cosmetic Act require the Commissioner to provide, by notice in the **Federal Register**, an opportunity for interested parties to request a change in the classification of a device based upon new information relevant to its classification when the Commissioner initiates a proceeding to develop a performance standard for the device if in class II or to issue an order requiring premarket approval for the device if in class III.

(b) If the Commissioner agrees that the new information submitted in response to a proposed order to require premarket approval of a device issued under section 515(b) of the Federal Food, Drug, and Cosmetic Act warrants a change in classification, the Commissioner shall follow the procedures under section 513(e) of the Federal Food, Drug, and Cosmetic Act and § 860.130 to effect such a change.

(c) If the Commissioner does not agree that the new information submitted in response to a proposed order to require premarket approval of a device issued under section 515(b) of the Federal Food, Drug, and Cosmetic Act warrants a change in classification, the Commissioner will deny the petition.

(d) The procedures under section 514(b) of the Federal Food, Drug, and Cosmetic Act are as follows:

(1) Within 30 days after publication of the Commissioner's notice referred to in paragraph (a) of this section, an interested person files a petition for reclassification in accordance with § 860.123.

* * * * *

(3) Within 60 days after publication of the notice referred to in paragraph (a) of this section, the Commissioner either denies the petition or gives notice of the intent to initiate a change in classification in accordance with § 860.130.

■ 13. Add § 860.133 to read as follows:

§ 860.133 Procedures when the Commissioner initiates a proceeding to require premarket approval under section 515(b) of the Federal Food, Drug, and Cosmetic Act.

(a) Section 515(b) of the Federal Food, Drug, and Cosmetic Act applies to proceedings to require premarket approval for a class III preamendments device.

(b) The Commissioner may require premarket approval for a class III preamendments device by administrative order published in the **Federal Register** following publication of a proposed order in the **Federal Register**, a meeting of a device classification panel described in section 513(b) of the Federal Food, Drug, and Cosmetic Act, and consideration of comments from all affected stakeholders, including patients, payors and providers. The meeting of a device classification panel may take place at any time before or after the publication of a proposed order in the **Federal Register**. Any recommendation submitted to the Commissioner by the panel will be published in the **Federal Register** when the Commissioner publishes an administrative order under this section.

■ 14. Section 860.134 is amended by revising the section heading and paragraph (a)(3), adding paragraph (a)(4), revising paragraphs (b) introductory text and (b)(4) and (6), and adding paragraphs (c) and (d) to read as follows:

§ 860.134 Procedures for reclassification of ''postamendments devices'' under section 513(f)(3) of the Federal Food, Drug, and Cosmetic Act.

(a) * * *

(3) The Commissioner has classified the device into class I or class II in response to a petition for reclassification under this section.

(4) The device is classified under a request for ''de novo'' classification under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act.

(b) The procedures for effecting reclassification under section 513(f)(3) of the Federal Food, Drug, and Cosmetic Act when initiated by a manufacturer or importer are as follows:

* * * * *

(4) Within 90 days after the date the petition is referred to the panel, following the review procedures set forth in § 860.84(c) for the original classification of a ''preamendments device'', the panel submits to the Commissioner its recommendation containing the information set forth in § 860.84(d). A panel recommendation is regarded as preliminary until the Commissioner has reviewed it, discussed it with the panel, if appropriate, and developed a proposed reclassification order. Preliminary panel recommendations are filed in the Division of Dockets Management upon receipt and are available to the public and posted at *http://www.regulations.gov.*

* * * * *

(6) Within 90 days after the panel's recommendation is received (and no more than 210 days after the date the petition was filed), the Commissioner denies or approves the petition by order in the form of a letter to the petitioner. If the Commissioner approves the petition, the order will classify the device into class I or class II in accordance with the criteria set forth in § 860.3 and subject to the applicable requirements of § 860.93, relating to the classification of implantable devices and devices intended for a use in supporting or sustaining human life, and § 860.95, relating to exemptions

from certain requirements of the Federal Food, Drug, and Cosmetic Act.

* * * * *

(c) By administrative order published under section 513(f)(3) of the Federal Food, Drug, and Cosmetic Act, the Commissioner may, on the Commissioner's own initiative, change the classification from class III under section 513(f)(1) either to class II, if the Commissioner determines that special controls in addition to general controls are necessary and sufficient to provide reasonable assurance of the safety and effectiveness of the device and there is sufficient information to establish special controls to provide such assurance, or to class I if the Commissioner determines that general controls alone would provide reasonable assurance of the safety and effectiveness of the device. The procedures are as follows:

(1) The Commissioner publishes a proposed reclassification order in the **Federal Register** seeking comment on the proposed reclassification.

(2) Before or after the publication of a proposed reclassification order, the Commissioner may consult with the appropriate classification panel with respect to the reclassification of the device. The panel will consider reclassification in accordance with the consultation procedures of § 860.125.

(3) Following consideration of comments to a public docket and any panel recommendations or comments, the Commissioner may change the classification of a device by final administrative order published in the **Federal Register**.

(d) An administrative order under this section changing the classification of a device from class III to class II may establish the special controls necessary to provide reasonable assurance of the safety and effectiveness of the device.

■ 15. Amend § 860.136 as follows:

■ a. Revise the section heading, paragraph (a), and paragraph (b) introductory text;

■ b. Remove paragraph (b)(3);

■ c. Redesignate paragraphs (b)(4) through (6) as paragraphs (b)(3) through (5), respectively;

■ d. Revise newly redesignated paragraph (b)(4); and

■ e. Add paragraphs (c) and (d).

The revisions and additions read as follows:

§ 860.136 Procedures for transitional products under section 520(*l*) of the Federal Food, Drug, and Cosmetic Act.

(a) Section 520(*l*)(2) of the Federal Food, Drug, and Cosmetic Act applies to reclassification proceedings initiated by the Commissioner or in response to a request by a manufacturer or importer for reclassification of a device currently in class III by operation of section 520(*l*)(1). This section applies only to devices that the Food and Drug Administration regarded as ''new drugs'' before May 28, 1976.

(b) The procedures for effecting reclassification under section 520(*l*) of the Federal Food, Drug, and Cosmetic Act when initiated by a manufacturer or importer are as follows:

* * * * *

(4) Within 180 days after the petition is filed (where the Commissioner has determined it to be adequate for review), the Commissioner, by order in the form of a letter to the petitioner, either denies the petition or classifies the device into class I or class II in accordance with the criteria set forth in § 860.3.

* * * * *

(c) By administrative order, the Commissioner may, on the Commissioner's own initiative, change the classification from class III under section 520(*l*) of the Federal Food, Drug, and Cosmetic Act either to class II, if the Commissioner determines that special controls in addition to general controls are necessary and sufficient to provide reasonable assurance of the safety and effectiveness of the device and there is sufficient information to establish special controls to provide such assurance, or to class I if the Commissioner determines that general controls alone would provide reasonable assurance of the safety and effectiveness of the device. The procedures are as follows:

(1) The Commissioner publishes a proposed reclassification order in the **Federal Register** seeking comment on the proposed reclassification.

(2) Before or after the publication of a proposed reclassification order, the Commissioner may consult with the appropriate classification panel with respect to the reclassification of the device. The panel will consider reclassification in accordance with the consultation procedures of § 860.125.

(3) Following consideration of comments to a public docket and any panel recommendations or comments, the Commissioner may change the classification of a device by final administrative order published in the **Federal Register**.

(d) An administrative order under this section changing the classification of a device from class III to class II may establish the special controls necessary to provide reasonable assurance of the safety and effectiveness of the device.

Dated: March 18, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–06364 Filed 3–21–14; 11:15 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. EPA–R02–OAR–2014–0182; FRL–9908–44–Region–2]

Approval and Promulgation of Implementation Plans; Carbon Monoxide Maintenance Plan, Conformity Budgets, Emissions Inventories; State of New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the New York State Department of Environmental Conservation. This revision will establish an updated ten-year carbon monoxide (CO) maintenance plan for the New York portion of the New York-Northern New Jersey-Long Island (NYCMA) CO area which includes the following seven counties: Bronx, Kings, Nassau, New York, Queens, Richmond and Westchester. In addition, EPA proposes to approve a revision to the CO motor vehicle emissions budgets for New York and revisions to the 2007 Attainment/Base Year emissions inventory.

The New York portion of the NYCMA CO area was redesignated to attainment of the CO National Ambient Air Quality Standard (NAAQS) on April 19, 2002 and maintenance plans were also approved at that time. By this action, EPA is proposing to approve the second maintenance plan for this area because it provides for continued attainment for an additional ten years of the CO NAAQS.

DATES: Comments must be received on or before April 24, 2014.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R02–OAR–2014–0182, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- Email: *Ruvo.Richard@epa.gov.*
- Fax: 212–637–3901.
- Mail: Richard Ruvo, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290

Broadway, 25th Floor, New York, New York 10007–1866.

Hand Delivery: Richard Ruvo, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R02–OAR–2014–0182. 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information 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 *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Henry Feingersh *feingersh.henry@epa.gov* for general questions, Raymond Forde *forde.raymond@epa.gov* for emissions inventory questions, or Melanie Zeman *zeman.melanie@epa.gov* for mobile source related questions at the U.S. Environmental Protection Agency, Air Programs Branch, 290 Broadway, 25th Floor, New York, NY 10007–1866, telephone number (212) 637–4249, fax number (212) 637–3901.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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I. What is the nature of EPA's action?

EPA is proposing to approve an updated ten-year carbon monoxide (CO) maintenance plan for the New York portion of the New York-Northern New Jersey-Long Island (NYCMA) CO area. On April 19, 2002, the EPA approved a request from New York to redesignate the New York portion of the NYCMA CO area to attainment of the CO National Ambient Air Quality Standard (NAAQS) (67 FR 19337). In addition, the EPA also approved at that time a ten-year CO maintenance plan for the area. The Clean Air Act (the Act) requires that an area redesignated to attainment of the CO NAAQS must submit a second ten-year CO maintenance Plan to show how the area will continue to attain the CO standard for an additional ten years. On May 9, 2013, New York submitted a second ten-year CO maintenance plan for the New York portion of the NYCMA CO area and requested that EPA approve the plan. The following sections describe how the EPA made its determination proposing to approve the second ten-year maintenance plan. EPA is also proposing to approve a revision to the CO motor vehicle emissions budgets for New York. This additional State Implementation Plan (SIP) revision is discussed in section II.B.6. A more detailed discussion of EPA's review and proposed action is found in the Technical Support Document available in the Docket for this action, and by contacting the individuals in the For Further Information Section.

II. What is the Carbon Monoxide Limited Maintenance Plan for the New York portion of the New York-Northern New Jersey-Long Island Carbon Monoxide area?

A maintenance plan is a SIP revision that must demonstrate continued attainment of the applicable NAAQS in the maintenance area for at least ten years. The Act requires that a second ten-year plan be submitted in order to assure that the area will continue to stay in compliance with the relevant NAAQS. For the NYCMA CO area, the New York State Department of Environmental Conservation is proposing to utilize EPA's limited maintenance plan approach, as detailed in the EPA guidance memorandum, ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas'' from Joseph Paisie, Group Leader, Integrated Policy and Strategies Group, Office of Air Quality and Planning Standards OAQPS, dated October 6, 1995. Pursuant to this approach, EPA will consider the maintenance demonstration satisfied for areas if the monitoring data show the design value is at or below 7.65 parts per million (ppm), or 85 percent of the level of the 8-hour CO NAAQS. The design value must be based on eight consecutive quarters of data. For such areas, there is no requirement to project emissions of air quality over the maintenance period. EPA believes if the area begins the maintenance period at, or below, 85 percent of the CO 8 hour NAAQS, the applicability of Prevention of Significant Deterioration (PSD) requirements, the control measures already in the SIP, and Federal measures, should provide adequate assurance of maintenance over the initial 10-year maintenance period. In addition, the design value for the area must continue to be at or below 7.65

ppm until the time of final EPA action on the redesignation.

III. What is included in a maintenance plan?

Section 175A of the Act sets forth the elements of maintenance plans for areas seeking redesignation from nonattainment to attainment. The initial and subsequent ten-year plans must each demonstrate continued attainment of the applicable NAAQS for at least ten years after approval. EPA is proposing action on the second ten-year maintenance plan which covers the period from 2012 through 2022. The specific elements of a maintenance plan are:

A. Attainment Inventory

EPA's October 6, 1995 Limited Maintenance Plan guidance states that for inventory purposes the state is only required to submit an attainment inventory to EPA that is based on monitoring data which shows attainment. There is no requirement to project emissions over the maintenance period. The calendar year inventory selected for the attainment inventory is 2007. This means if 2007 is a calendar year which has monitoring data which demonstrates attainment of the standard, the 2007 base year inventory can be used as the attainment year inventory and no projection inventories are required over the years of the maintenance period. Only calendar year 2007 summary emissions data (based on winter season day) are required. In addition, the inventory should be consistent with EPA's most recent guidance on emission inventories for nonattainment areas available at the time and should include emissions during the time period associated with the monitoring data showing attainment.

New York submitted a limited maintenance plan which included a 2007 base year emissions inventory. The 2007 inventory is also classified as the attainment year inventory for the limited maintenance plan. New York has elected 2007 because it is the attainment year base year that will be used for the limited maintenance plan and 2007 represents one of the years of violation free monitored data in the area. The inventory included peak winter season daily emissions from stationary point, stationary area, non-road mobile, and on-road mobile sources of CO. These emission estimates were prepared in accordance with EPA guidance.

EPA is proposing to approve the CO inventory for the counties of Bronx, Kings, Nassau, New York, Queens, Richmond and Westchester. Details of the inventory review are located in section VII. A. of this action. A more detailed discussion of how the emission inventory was reviewed and the results of EPA's review are presented in the technical support document.

Table 1 presents a summary of the 2007 CO peak winter season daily emissions estimates in tons per day for the NYCMA CO area. Again, under the Limited Maintenance Plan guidance, there is no requirement to project emissions over the maintenance period.

TABLE 1—2007 BASE YEAR INVENTORY NYCMA CO AREA

[Tons/peak winter season day]

County	Point	Area	Off-highway mobile	Highway mobile	Total
Bronx	1.77	77.18	29.38	156.54	264.87
Kings	2.81	149.41	96.40	263.40	510.22
Nassau	3.52	81.07	118.93	580.89	784.40
New York	4.21	141.96	230.59	202.87	579.64
Queens	7.71	125.77	102.03	441.15	675.66
Richmond	1.48	25.57	21.12	130.41	178.58
Westchester	1.11	60.18	81.66	382.66	525.62
Total	22.61	661.14	678.31	2,257.93	3,519.99

B. Maintenance Demonstration

New York has met the Limited Maintenance Plan air quality criteria requirement by demonstrating that its highest monitored design value is less than 85 percent (7.65 parts per million) of the CO standard of 9.0 parts per million. The highest monitored design value in the NYCMA CO area for the 2012–2013 design year was 2.5 parts per million at a monitoring site in New Jersey. The highest monitored design value measured in the New York State portion of the NYCMA CO area was 1.5 parts per million. In addition, New York commits to continued implementation of all other Federal and State measures already implemented as part of its CO SIP. Thus, according to the Limited Maintenance Guidance, emission projections are not required.

C. Monitoring Network

New York continues to operate its CO monitoring network and will continue to work with the EPA through the air monitoring network review process as required by 40 CFR Part 58 to determine the adequacy of its network. New York will continue annual reviews of its data in order to verify continued attainment of the NAAQS. As mentioned earlier, all of New York's 8-hour design values are well below the 9.0 ppm 8-hour NAAQS for CO with the highest monitor in the New York portion of the NYCMA reading 1.5 ppm, as shown in Table 2.

TABLE 2—DESIGN VALUES FOR CO IN NEW YORK

[8-Hour standard—9 parts per million]

Monitoring location	2012–2013 Design value (parts per million)
200th Street, Bronx	1.5
160 Convent Ave., New York	1.3
Queens College, Queens	1.1

In its SIP revision, New York used the 2010–2011 design values. EPA reviewed more recent data in addition to the 2010–2011 data and found the maximum 2012–2013 design value for New York to be 1.5 ppm, which continues to show attainment of the NAAQS.

D. Verification of Continued Attainment

New York will verify that the New York portion of the NYCMA CO area continues to attain the CO NAAQS through an annual review of its monitoring data. If any design value exceeds 7.65 ppm, New York will coordinate with EPA Region 2 to verify and evaluate the data and then, if warranted, develop a full maintenance plan for the affected maintenance area.

E. Contingency Plan

Section 175A (d) of the Act requires that a maintenance plan include a contingency plan which includes contingency measures, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area. Contingency measures do not have to be fully adopted at the time of redesignation. However, the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expeditiously once they are triggered by a specified event. In addition, the contingency plan includes a requirement that the State continue to implement all control measures used to bring the area into attainment.

The triggers specified in New York's previous maintenance plan are included in this Limited Maintenance Plan. If air quality monitoring data indicate that the CO NAAQS were exceeded, New York will analyze the data to determine the cause of the violation. If it is determined that the violation was caused by a non-local motor vehicle usage event, then the State will institute the contingency measures described below.

1. Control Measures

New York has implemented a number of measures to control motor vehicle CO emissions. Emission reductions achieved through the implementation of these control measures are enforceable. These measures include the Federal Motor Vehicle Control Program, Federal reformulated gasoline, New York's pre-1990 modifications to its inspection and maintenance (I/M) program, and local control measures relied on in the SIP.

The State of New York has demonstrated that actual enforceable emission reductions are responsible for the air quality improvement and that the CO emissions in the base year are not artificially low due to local economic downturn. EPA finds that the combination of existing EPA-approved SIP and Federal measures contribute to the permanence and enforceability of reductions in ambient CO levels that have allowed the New York portion of the NYCMA CO area to attain the NAAQS since 1992.

New York commits to continuing to implement all control measures used to bring the area into attainment.

2. Contingency Measures

The State plans to continue to use the contingency measure from the original maintenance plan. The plan included implementation of an enhanced I/M program. This program is fully operational and the State commits to meet the performance standard for an enhanced I/M program in an effort to maintain the CO NAAQS. Although the plan is currently in place, EPA guidance allows for it to act as a contingency measure. In addition, since we had approved this measure in the previous maintenance plan, we are proposing to approve it in this action.

F. Conformity

Section 176(c) of the Act defines conformity as meeting the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. The Act further defines transportation conformity to mean that no Federal transportation activity will: (1) Cause or contribute to any new violation of any standard in any area; (2) increase the frequency or severity of any existing violation of any standard in any area; or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. The Federal transportation conformity rule, 40 CFR part 93 subpart A, sets forth the criteria and procedures for demonstrating and assuring conformity of transportation plans, programs and projects which are developed, funded or approved by the U.S. Department of Transportation, and by metropolitan planning organizations or other recipients of Federal funds under Title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. chapter 53).

The transportation conformity rule applies within all nonattainment and maintenance areas. As prescribed by the transportation conformity rule, once an area has an applicable SIP with motor vehicle emissions budgets (MVEB), the expected emissions from planned transportation activities must be consistent with such established budgets for that area.

In the case of the NYCMA CO area, however, the emissions budgets may be treated as essentially not constraining for the length of this second maintenance period as long as the area continues to meet the limited maintenance criteria, because there is no reason to expect that these areas will experience so much growth in that period that a violation of the CO NAAQS would result. In other words, emissions from on-road transportation sources need not be capped for the maintenance period because it is unreasonable to believe that emissions from such sources would increase to a level that would threaten the air quality in this area for the duration of this maintenance period. Therefore, for the limited maintenance plan CO maintenance area, all Federal actions that require conformity determinations under the transportation conformity rule are considered to satisfy the regional emissions analysis and ''budget test'' requirements in 40 CFR 93.118 of the rule.

Since limited maintenance plan areas are still maintenance areas, however, transportation conformity determinations are still required for transportation plans, programs and projects. Specifically, for such determinations, transportation plans, transportation improvement programs, and projects must still demonstrate that they are fiscally constrained (40 CFR part 108) and must meet the criteria for consultation and Transportation Control Measure (TCM) implementation in the conformity rule (40 CFR 93.112 and 40 CFR 93.113, respectively). In addition, projects in limited maintenance areas will still be required to meet the criteria for CO hot spot analyses to satisfy ''project level'' conformity determinations (40 CFR 93.116 and 40 CFR 93.123) which must incorporate the latest planning assumptions and models that are available. All aspects of transportation conformity (with the exception of satisfying the emission budget test) will still be required.

If the NYCMA CO area should monitor CO concentrations at or above the limited maintenance eligibility criteria or 7.65 parts per million then this maintenance area would no longer qualify for a limited maintenance plan and would revert to a full maintenance plan. In this event, the limited maintenance plan would remain applicable for conformity purposes only until the full maintenance plan is submitted and EPA has found its motor vehicle emissions budget adequate for conformity purposes or EPA approves the full maintenance plan SIP revision. At that time regional emissions analyses would resume as a transportation conformity criteria.

EPA has also posted the Limited Maintenance plan for the NYCMA CO area on our Transportation Conformity Adequacy Web site for a thirty day public comment period beginning June 11, 2013. No public comments were received.

IV. What is the New York emissions inventory?

Section 182(a)(3) and 172(c)(3) of the Act requires the periodic submission of a base inventory for SIP planning processes to address the pollutants for the eight hour-ozone, $PM_{2.5}$ and CO national ambient air quality standard. Identifying the base year gives certainty to states that requires submission of the ozone, $PM_{2.5}$ and CO emission inventories periodically. These requirements allow the EPA, based on the states' progress in reducing emissions, to periodically reassess its policies and air quality standards and revise them as necessary. Most important, the ozone, $PM_{2.5}$ and CO inventories will be used to develop and assess new control strategies that the states will need to submit in their attainment demonstration SIPs for the new national ambient air quality standards for ozone, $PM_{2.5}$ and for CO. The base year inventory may also serve as part of statewide inventories for purposes of regional modeling in transport areas. The base year inventory plays an important role in modeling demonstrations for areas classified as nonattainment and outside transport regions. For the reasons stated above, ideally EPA would therefore emphasize the importance and benefits of developing a comprehensive, current, and accurate emission inventory (similar to the 1990 base year inventory effort). In this case, the 2007 base year has been selected as the inventory that will be used for planning purposes for the NYCMA CO area.

There are specific components of an acceptable emission inventory. The emission inventory must meet certain minimum requirements for reporting each source category. Specifically, the source requirements are detailed below.

The review process, which is described in supporting documentation, is used to determine that all components of the base year inventory are present. This review also evaluates the level of supporting documentation provided by the state, assesses whether the emissions were developed according to current EPA guidance, and evaluates the quality of the data.

The review process is outlined here and consists of 8 points that the inventory must include. For a base year emission inventory to be acceptable, it must pass all of the following acceptance criteria:

1. Evidence that the inventory was quality assured by the state and its implementation documented.

2. The point source inventory was complete.

3. Point source emissions were prepared or calculated according to the current EPA guidance.

4. The area source inventory was complete.

5. The area source emissions were prepared or calculated according to the current EPA guidance.

6. Non-road mobile emissions were prepared according to current EPA guidance for all of the source categories.

7. The method (e.g., HPMS or a network transportation planning model) used to develop VMT estimates followed EPA guidance.

8. The MOBILE model was correctly used to produce emission factors for each of the vehicle classes.

Based on EPA's review, New York satisfied all of EPA's requirements for purposes of providing a comprehensive, accurate, and current inventory of actual emissions for CO areas. Where applicable, CO peak winter season daily emissions are provided for CO nonattainment area. The inventory was developed in accordance with *Emission Inventory Guidance for Implementation of Ozone and Particulate Matter NAAQS and Regional Haze Regulation,* dated August 2005. A summary of EPA's review is given below:

1. The Quality Assurance (QA) plan was implemented for all portions of the inventory. The QA plan included a QA/Quality control (QC) program for assessing data completeness and standard range checking. Critical data elements relative to the inventory sources were assessed for completeness. QA checks were performed relative to data collection and analysis, and double counting of emissions from point, area and mobile sources. QA/QC checks were conducted to ensure accuracy of units, unit conversions, transposition of figures, and calculations.

2. The inventory is well documented. New York provided documentation detailing the methods used to develop emissions estimates for each category. In addition, New York identified the sources of data used in developing the inventory.

3. The point source emissions are complete in accordance with EPA guidance.

4. The point source emissions were prepared/calculated in accordance with EPA guidance.

5. The area source emissions are complete and were prepared/calculated in accordance with EPA guidance.

6. Emission estimates for the non-road mobile source categories were correctly based on the latest non-road mobile model and prepared in accordance with EPA guidance.

7. The method used to develop VMT estimates was in accordance with EPA guidance and was adequately described and documented in the inventory report.

8. Latest Mobile model was used correctly for each of the vehicle classes. The 2007 base year inventory has been developed in accordance with EPA guidance. Therefore, EPA is proposing to approve the 2007 base year CO emission inventory.

A more detailed discussion of how the emission inventory was reviewed and the results of the review are presented in the technical support document. Detailed emission inventory development procedures can be found in the following document: *Emission Inventory Guidance for Implementation of Ozone and Particulate Matter NAAQS and Regional Haze Regulation,* dated August 2005. See Table 1 for a summary of 2007 CO peak winter season daily emission estimates by source sector and by county for the NYCMA CO area.

V. What action is EPA proposing to take?

EPA has evaluated New York's submittals for consistency with the Act and Agency regulations and policy. EPA is proposing to approve New York's CO limited maintenance plan because it meets the requirements set forth in section 175A of the Act and continues to demonstrate that the NAAQS for CO will continue to be met for the next ten years. EPA is proposing to approve the revisions to the CO motor vehicle emissions budgets for New York. Finally, this notice also proposes to approve revisions to the 2007 base year emission inventories.

EPA views the SIP revisions proposed in today's proposal as separable actions. This means that if EPA receives adverse comments on particular portions of this notice and not on other portions, EPA may choose not to take final action at the same time in a single notice on all of these SIP revisions. Instead, EPA may choose to take final action on these SIP revisions in separate notices.

Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Region 2 Office by one of the methods discussed in the **ADDRESSES** section of this action.

VI. 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 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).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: March 10, 2014.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2014–06585 Filed 3–24–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R01–OAR–2012–0707; A–1–FRL–9908–36–Region 1]

Approval and Promulgation of State Plans (Negative Declarations) for Designated Facilities and Pollutants: Connecticut, Maine, New Hampshire, and Vermont; Withdrawal of State Plan for Designated Facilities and Pollutants: New Hampshire; Technical Corrections to Approved State Plans (Negative Declarations): Rhode Island and Vermont

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve negative declarations for hospital/medical/infectious waste incinerators (HMIWI) for the State of Connecticut and the State of New Hampshire and negative declarations for sewage sludge incinerators (SSI) for the State of Maine and the State of Vermont. EPA is also proposing to approve the withdrawal of a previously-approved State Plan for HMIWI in the State of New Hampshire. Lastly, EPA is proposing technical corrections to Clean Air Act Sections 111(d) and 129 State Plan (Negative Declaration) approvals for Other Solid Waste Incinerators (OSWI) for the State of Rhode Island and the State of Vermont.

DATES: Written comments must be received on or before April 24, 2014.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2012–0707 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: mcdonnell.ida@epa.gov.*
3. *Fax:* (617) 918–0653.
4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2013–0109'', Ida McDonnell, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxic, & Indoor Programs Unit, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912.
5. *Hand Delivery or Courier.* Deliver your comments to: Ida McDonnell, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxic, & Indoor Programs Unit, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal 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: Patrick Bird, Air Permits, Toxic, & Indoor Programs Unit, Air Programs Branch, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Mail Code: OEP05–2, Boston, MA, 02109–0287. The telephone number is (617) 918–1287. Mr. Bird can also be reached via electronic mail at *bird.patrick@epa.gov*.

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the State's State Plan revisions 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 action 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: February 27, 2014.

H. Curtis Spalding,

Regional Administrator, EPA New England.

[FR Doc. 2014–06380 Filed 3–24–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R02–OAR–2014–0127, FRL–9908–45–Region–2]

Approval and Promulgation of State Plans for Designated Facilities; New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the State plan submitted by New York State to implement and enforce the Emission Guidelines (EG) for existing sewage sludge incineration (SSI) units. The State plan is consistent with the EG promulgated by EPA on March 21, 2011. New York's plan establishes emission limits and other requirements for the purpose of reducing toxic air emissions and other air pollutants from SSI units throughout the State. New York submitted its plan to fulfill the requirements of sections 111(d) and 129 of the Clean Air Act.

DATES: Written comments must be received on or before April 24, 2014.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R02–OAR–2014–0127 by one of the following methods:

- *www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Email: mailto:Ruvo.Richard@epa.gov*
- *Mail:* EPA–R02–OAR–2014–0127, Richard Ruvo, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- *Hand Delivery:* Richard Ruvo, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's 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–R02–OAR–2014–0127. 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dpckets.htm*.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., 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 form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Anthony (Ted) Gardella (*Gardella.anthony@epa.gov*), Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3892.

SUPPLEMENTARY INFORMATION: The following table of contents describes the format for the Supplementary Information section:

I. EPA Action
- A. What action is EPA proposing today?
- B. Why is EPA taking this action?
- C. Who is affected by New York's State plan?
- D. How does this approval affect sources located in Indian Nation Land?

II. Background
- A. What is a State plan?
- B. What is an SSI State plan?
- C. Why is EPA requiring New York to submit an SSI State plan?
- D. What are the requirements for an SSI State plan?

III. New York's State Plan
- A. What is contained in the New York State plan?
- B. What approval criteria did we use to evaluate New York's State plan?

IV. What is EPA's conclusion?

V. Statutory and Executive Order Reviews

I. EPA Action

A. What action is EPA proposing today?

EPA is proposing to approve New York's State plan, submitted on July 1, 2013, for the control of air emissions from existing sewage sludge incinerator (SSI) units throughout the State, except for any existing SSI units located in Indian Nation Land. New York submitted its plan to fulfill the requirements of section 111(d) and 129 of the Clean Air Act (CAA). The State plan adopts and implements the Emission Guidelines (EG) applicable to existing SSI units, and establishes emission limits and other requirements for units constructed on or before October 14, 2010. This proposed approval, once finalized and effective, will make the New York SSI rules included in the State plan federally enforceable.

B. Why is EPA taking this action?

EPA has evaluated New York's SSI State plan for consistency with the CAA, EPA guidelines and policy. EPA has determined that New York's State plan meets all applicable requirements and therefore, EPA is proposing to approve New York's State plan to implement and enforce the EG applicable to existing SSI units.

C. Who is affected by New York's State plan?

New York's State plan regulates all the units designated by the EG for existing SSI units which commenced construction on or before October 14, 2010 and which are located at a wastewater treatment facility designed

to treat domestic sewage sludge. If the owner or operator of an SSI unit made changes after September 21, 2011, that meet the definition of modification (see Title 40, Code of Federal Regulations, section 60.5250 (40 CFR 60.5250)), the SSI unit becomes subject to subpart LLLL (New Source Performance Standards for New Sewage Sludge Incineration Units) of 40 CFR part 60, and the State plan no longer applies to that unit.

D. How does this approval affect sources located in Indian Nation Land?

New York's State plan is not applicable to units located in Indian Nation Land. Therefore, if there are any existing SSI units located in Indian Nation Land these existing SSI units will be subject to the Federal plan.

II. Background

A. What is a State plan?

Section 111 of the CAA, ''Standards of Performance for New Stationary Sources,'' authorizes EPA to set air emissions standards for certain categories of sources. These standards are called New Source Performance Standards (NSPS). When a NSPS is promulgated for new sources, section 111(d) also requires that EPA publish an EG applicable to control the same pollutants from existing (or designated) facilities. States with designated facilities must then develop a State plan to adopt the EG into the State's body of regulations. States must also include in their State plan other requirements, such as inventories, legal authority, reporting and recordkeeping, and public participation documentation, to demonstrate their ability to enforce the State plans.

Section 129 of the CAA requires EPA to establish performance standards and emission guidelines for various types of new and existing solid waste incineration units. Section 129(b)(2) requires States to submit to EPA for approval section 111(d)/129 plans that implement and enforce the promulgated EG. Section 129(b)(3) requires EPA to promulgate a Federal plan (FP) within two years from the date on which the EG, or when revision to the EG, is promulgated. The FP is applicable to affected facilities when the state has failed to receive EPA approval of the section 111(d)/129 plan. The FP remains in effect until the state submits and receives EPA approval of its section 111(d)/129 plan.

State plan submittals under CAA sections 111(d) and 129 must be consistent with the relevant EG, in this instance 40 CFR part 60, subpart MMMM, and the requirements of 40 CFR part 60, subpart B and part 62, subpart A. Section 129 of the CAA regulates air pollutants that include organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, and mercury), hydrogen chloride, sulfur dioxide, nitrogen oxides, particulate matter, and opacity (as appropriate).

B. What is an SSI State plan?

An SSI State plan is a State plan, as described above, that controls air pollutant emissions from existing sewage sludge incinerators located at a wastewater treatment facility designed to treat domestic sewage sludge and that commenced construction on or before October 14, 2010. The applicable types of SSI units include fluidized bed and multiple hearth incinerators.

C. Why is EPA requiring New York to submit an SSI State plan?

When EPA developed the NSPS for SSI units, we simultaneously developed the EG to control air emissions from existing SSI units (see 76 FR 15371, March 21, 2011). Under section 129 of the CAA, the EG is not federally enforceable; therefore, section 129 of the CAA also requires states to submit to EPA for approval State plans that implement and enforce the EG. Under section 129 of the CAA, these State plans must be at least as protective as the EG, and they become federally enforceable upon approval by EPA.

The procedures for adopting and submitting State plans are located in 40 CFR part 60, subpart B. If a state fails to have an approvable plan in place by March 21, 2013, the EPA is required to promulgate a federal plan to establish requirements for those sources not under an EPA-approved State plan. The procedures for EPA's approval and disapproval of State plans are located in 40 CFR part 62, subpart A. EPA is proposing to approve New York's State plan since it is deemed at least as protective as the standards set in the EG. New York has developed and submitted a State plan, as required by sections 111(d)/129 of the CAA, to gain federal approval to implement and enforce the EG for existing SSI units.

D. What are the requirements for an SSI State plan?

A section 111(d) State plan submittal must meet the requirements of 40 CFR part 60, subpart B, sections 60.23 through 60.26, and the EG found at 40 CFR part 60, subpart MMMM (see 76 FR 15371, March 21, 2011). Subpart B contains the procedures for the adoption and submittal of State plans. This subpart addresses public participation, legal authority, emission standards and other emission limitations, compliance schedules, emission inventories, source surveillance, and compliance assurance and enforcement requirements.

EPA promulgated the EG at 40 CFR part 60, subpart MMMM on March 21, 2011. Subpart MMMM contains guidelines to the states for submittal of plans that address existing SSI units. In addition, subpart MMMM contains the technical requirements for existing SSI units located at a wastewater treatment plant designed to treat domestic sewage sludge and applies to SSI units that commenced construction on or before October 14, 2010. A state can address the SSI technical requirements by adopting its own regulation that includes all the applicable requirements of subpart MMMM or by adopting by reference subpart MMMM. The section 111(d) State plan is required to be submitted within one year of the EG promulgation date, i.e. by March 21, 2012. Prior to submittal to EPA, the State must make available to the public the State plan and provide opportunity for public comment, including a public hearing.

III. New York's State Plan

A. What is contained in the New York State plan?

On July 1, 2013,[1] the New York State Department of Environmental Conservation (NYSDEC) submitted its section 111(d) State plan for implementing EPA's EG for existing SSI units located in New York State.

New York has adopted by reference the applicable requirements of the EG in Part 200 of Title 6 of the New York Code of Rules and Regulations (6NYCRR) of the State of New York, entitled ''General Provisions'' and in Subpart 219–1 of 6NYCRR entitled ''Incineration-General Provisions'' and Subpart 219–9 of 6NYCRR entitled ''Emission Guidelines and Compliance Schedules for Existing Sewage Sludge Incineration Units.'' These amended regulations became effective on May 12, 2012. By incorporating the EG by reference into Part 200, NYSDEC has the authority to include them as applicable within Subpart 219–9, which addresses the applicability of the various Part 219 (New York's incineration rules) requirements. Part 219 now includes the new requirements incorporated from the EG, as well as the necessary compliance schedules and necessary definition

[1] In an email dated 02/28/14, New York responded to an EPA request to provide clarifying information concerning the State's plan. This clarifying information also is available in EPA's docket at *www.regulations.gov.*

changes required for the transformation of emission guidelines into a State plan. As a result, the Part 219 requirements are enforceable by New York and become federally enforceable once the State plan is approved by EPA.

Section 60.5015 of the EG describes all of the required elements that must be included in a state's plan for SSI units. New York's State plan includes all of the required elements described in section 60.5015 of the EG, as summarized herein:

(1) A demonstration of the State's legal authority to implement the sections 111(d) and 129 State plan;

(2) State rules adopted into 6NYCRR Parts 200 and 219 as the mechanism for implementing and enforcing the State plan;

(3) An inventory of twelve known SSI facilities, including twenty-one SSI units, along with an inventory of their air pollutant emissions (see sections A and B of New York's State plan as well as the clarifying information submitted by New York). Of these twenty-one SSI units, at least seven units, and possibly more, will have ceased operation by the March 21, 2016 compliance date. Also, the inventory includes an additional nine facilities with fifteen SSI units that have expired permits and that are no longer in operation—New York has indicated in its State plan that these facilities would be considered new facilities subject to 40 CFR part 60, subpart LLLL (Standards of Performance for New Stationary Sources) should they apply for a new air permit;

(4) Emission limits, emission standards, operator training and qualification requirements, and operating limits that are at least as protective as the EG;

(5) Enforceable compliance schedules incorporated into Subpart 219–9, part of New York's incineration rule, as follows: either (a) a one year schedule whereby full compliance is achieved by twelve months after EPA's approval of New York's State plan or June 21, 2013, whichever is earlier, or (b) an extended schedule whereby full compliance is achieved by thirty-six months after EPA's approval of New York's State plan or March 21, 2016, whichever is earlier.

(6) Testing, monitoring, reporting and recordkeeping requirements for the designated facilities;

(7) Records of the public hearing on the State plan; and,

(8) Provisions for annual state progress reports to EPA on implementation of the State plan.

EPA proposes to determine that New York's State plan for SSI units includes all the required State plan elements described in section 60.5015 of the EG.

B. What approval criteria did we use to evaluate New York's State plan?

EPA reviewed New York's State plan for approval against the following criteria: 40 CFR 60.23 through 60.26, ''Subpart B-Adoption and Submittal of State Plans for Designated Facilities;'' and 40 CFR 60.5000 through 60.5250, ''Subpart MMMM-Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units;'' and 40 CFR 62, subpart A, ''General Provisions'' for ''Approval and Promulgation of State Plans for Designated Facilities and Pollutants.''

IV. What is EPA's conclusion?

The EPA has determined that New York's State plan meets all the applicable approval criteria as discussed above and, therefore, EPA is proposing to approve New York State's sections 111(d) and 129 State plan for existing sewage sludge incineration units.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing NYSDEC's submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a NYSDEC submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a NYSDEC submission, to use VCS in place of a NYSDEC submission that otherwise satisfies the provisions of the CAA. 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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the Attorney General's ''Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed rule for the approval of NYSDEC's section 111(d)/129 plan for SSI units does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfur acid plants, waste treatment and disposal.

Date: March 12, 2014.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2014–06579 Filed 3–24–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 39 and 52

[FAR Case 2014–006; Docket No. 2014–0006; Sequence No. 1]

RIN 9000–AM72

Federal Acquisition Regulation; Year Format

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to delete regulations relating to the year 2000 compliance.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before May 27, 2014 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2014–006 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''FAR Case 2014–006''. Select the link ''Comment Now'' that corresponds with ''FAR Case 2014–006.'' Follow the instructions provided at the ''Comment Now'' screen. Please include your name, company name (if any), and ''FAR Case 2014–006'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1800 F Street NW., 2nd Floor, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR Case 2014–006, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Procurement Analyst, at 202–501–0650, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAR Case 2014–006.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to delete obsolete coverage relating to the year 2000 compliance at FAR 39.002, 39.101(a), and 39.106. Also, the rule will make conforming changes to FAR 39.107 and the clause prescription at FAR 52.239–1. The year 2000 coverage is no longer needed because all of the issues addressing the transition to year 2000 compliance language have been resolved.

In 1997, an interim rule, FAR Case 96–607, was promulgated to address year 2000 compliance issues, (see 62 FR 273, January 2, 1997). FAR Case 96–607 was finalized on August 22, 1997 (62 FR 44830). Subsequently, Section 622 of the Omnibus Appropriations and Authorization Act for Fiscal Year 1999 (Pub. L. 105–277) provided that ''None of the funds appropriated in this or any other Act shall be used to acquire information technologies which do not comply with FAR section 39.106 (Year 2000 compliance) of the Federal Acquisition Regulation, unless an agency's Chief Information Officer determines that noncompliance with section 39.106 is necessary to the function and operation of the requesting agency or the acquisition is required by a signed contract with the agency in effect before the date of enactment of this Act. Any waiver granted by the Chief Information Officer shall be reported to the Office of Management and Budget, and copies shall be provided to Congress.'' FAR Case 98–306 was opened to incorporate this restriction in FAR part 39. The final FAR rule was published on June 17, 1999 (64 FR 32747) and has remained unchanged (See FAR 39.101).

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this rule is proposing to delete obsolete language from the regulation.

Nonetheless, an Initial Regulatory Flexibility Analysis has been performed and is summarized below:

This rule amends the FAR to delete obsolete coverage relating to the year 2000 compliance at FAR 39.002, 39.101(a), and 39.106. Also, the rule will make conforming changes to FAR 39.107 and the clause prescription at FAR 52.239–1. The year 2000 coverage is no longer needed because all of the issues addressing the transition to year 2000 compliance language have been resolved. Based upon Federal Procurement Data System data, there were 9021 Information Technology contractors in fiscal year 2013, of which 6284 were small business. The impact on small business is expected to be positive since we are deleting an obsolete requirement.

The Regulatory Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DOD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (FAR Case 2014–006), in correspondence.

IV. Paperwork Reduction Act

The proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 39 and 52

Government procurement.

Dated: March 19, 2014.

William Clark,

Acting Director, Office of Government-Wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose to amend 48 CFR parts 39 and 52 as set forth below:

■ 1. The authority citation for 48 CFR part 39 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

39.002 [Amended]

■ 2. Amend section 39.002 by removing the definition ''*Year 2000 compliant*''.

39.101 [Amended]

■ 3. Amend section 39.101 by removing paragraph (a); and redesignating paragraphs (b) through (e), as paragraphs (a) through (d).

39.106 [Removed]

39.107 [Redesignated as 39.106]

■ 4. Remove section 39.106 and redesignate section 39.107 as section 39.106.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 5. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113

52.239–1 [Amended]

■ 6. Amend section 52.239–1 by removing from the introductory text ''39.107'' and adding ''39.106'' in its place.

[FR Doc. 2014–06528 Filed 3–24–14; 8:45 am]

BILLING CODE 6820–EP–P

Notices

Federal Register
Vol. 79, No. 57
Tuesday, March 25, 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

Forest Service

Black Hills National Forest Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Black Hills National Forest Advisory Board (Board) will meet in Rapid City, South Dakota. The Board is established consistent with the Federal Advisory Committee Act of 1972 (5 U.S.C. App. II), the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et.seq.), the National Forest Management Act of 1976 (16 U.S.C. 1612), and the Federal Public Lands Recreation Enhancement Act (Pub. L. 108–447). The meeting is open to the public. The purpose of the meeting is to provide:

(1) Orientation on Public Service
(2) Update from the Recreational Facility working group
(3) Update from the Forest Health working group
(4) Briefing from US Fish and Wildlife on Threatened and Endangered Species
(5) Briefing on Forest Inventory and Analysis
(6) Update on Grazing and Range operations/procedures

DATES: The meeting will be held Wednesday, April 16, 2014 at 1:00 p.m.

All meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Mystic Ranger District, 8221 South Highway 16, Rapid City, South Dakota.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses, when provided, are placed in the record and available for public inspection and copying. The public may inspect comments received at the Black Hills National Forest Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Scott Jacobson, Committee Coordinator, by phone at 605–673–9216, or by email at *sjjacobson@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or procedings by contacting the person listed above.

SUPPLEMENTARY INFORMATION: Additional information concerning the Board, including the meeting summary/minutes, can be found by visiting the Board's Web site at: *http://www.fs.usda.gov/main/blackhills/workingtogether/advisorycommittees.* The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should submit a request in writing by April 7, 2014 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and time requests for oral comments must be sent to Scott Jacobson, Black Hills National Forest Supervisor's Office, 1019 North Fifth Street, Custer, South Dakota 57730; by email to *sjjacobson@fs.fed.us*, or via facsimile to 605–673–9208.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: March 18, 2014.

Dennis Jaeger,

Deputy Forest Supervisor.

[FR Doc. 2014–06526 Filed 3–24–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection; Correction

AGENCY: National Agricultural Statistic Service, USDA.

ACTION: Notice and request for comments; correction.

SUMMARY: This notice announced the National Agricultural Statistic Service's intentions to seek OMB's approval to request revision and extension of a current approve information collection, the Organic Survey. The notice was published in the **Federal Register** on March 17, 2014.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, 202–720–4333.

Corrections

In the **Federal Register** of March 17, 2014, in FR Doc. 2014–05843, make the following corrections:

1. On page 14663, in the first column, in the **SUMMARY**, correct ''Certified Organic Survey'' to read ''Organic Survey''.

2. On page 14663, in the second column, in the **SUPPLEMENTARY INFORMATION:**, under Title: correct ''Certified Organic Survey'' to read ''Organic Survey''.

3. On page 14663, in the second column, in the **SUPPLEMENTARY INFORMATION:**, under Abstract:, Paragraph one, line 21: correct ''Certified Organic Survey'' to read ''Organic Survey''.

4. On page 14663, in the second column, in the **SUPPLEMENTARY INFORMATION:**, under Abstract:, Paragraph two, add ''and farm operators exempt from certification'' to the end of the first sentence.

Yvette Anderson,

Federal Register Liaison Officer.

[FR Doc. 2014–06277 Filed 3–24–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Rural Business—Cooperative Service

Inviting Applications for Value-Added Producer Grants

AGENCY: Rural Business—Cooperative Service, USDA.

ACTION: Notice of extension of application deadline to incorporate priority for veteran farmers and ranchers.

SUMMARY: The Rural Business—Cooperative Service (RBS) extends the original deadline (February 24, 2014) for submitting applications for grant funds to help independent producers enter into value-added activities under section 231 of the Agriculture Risk Protection Act of 2000 (Pub. L. 106–224), as amended by section 6202 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246) (see 7 U.S.C. 1632a) announced in a notice of funding availability (NOFA) published November 25, 2013 in Vol. 78, No. 227 of the **Federal Register**. This action is taken to incorporate the provision for scoring priority to applications from veteran farmers and ranchers included in Section 6203 of the Agricultural Act of 2014 (Pub. L. 113–79).

DATES: The deadline for submitting applications under the notice published November 25, 2013, is extended to April 8, 2014.

ADDRESSES: Applications may be submitted via mail, courier, or hand delivery to the relevant RD State Office or electronically via *http://www.grants.gov,* in accordance with instructions published in the **Federal Register** Notice on November 25, 2013. Contact information for RD State Offices can be found at *http://www.rurdev.usda.gov/StateOfficeAddresses.html.*

FOR FURTHER INFORMATION CONTACT: Grants Division, Cooperative Programs, Rural Business—Cooperative Service, United States Department of Agriculture, 1400 Independence Avenue SW., MS–3250, Room 4016-South, Washington, DC 20250–3250, or call 202–720–8460.

SUPPLEMENTARY INFORMATION:

Background and Discussion of Extension of Application Deadline

RBS published a Notice of Funding Availability (NOFA) on November 25, 2013 at 78 FR 70260 with an application deadline of February 24, 2014. A new Farm Bill, the Agricultural Act of 2014, (Pub. L. 113–79) was subsequently signed into law on February 7, 2014. RBS is extending the deadline to incorporate Farm Bill language creating a priority category for veteran farmers and ranchers. Applicants may now qualify for the award of 10 priority points in one of the following categories: Beginning Farmers or Ranchers, Socially Disadvantaged Farmers or Ranchers, or if you are an Operator of a Small or Medium-sized farm or ranch structured as a Family Farm, propose a Mid-Tier Value Chain project, as a Farmer or Rancher Cooperative, or as veteran farmer or rancher. Applicants may apply and can receive points in only one category.

The term 'veteran farmer or rancher' as now defined at 7 U.S.C. 1632a(b)(6) means a farmer or rancher who has served in the Armed Forces (as defined in section 101(10) of title 38 United States Code) and who (A) has not operated a farm or ranch; or (B) has operated a farm or ranch for not more than 10 years. The VAPG definition references section 2501(e) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(e)) that was amended by section 12201 of the Farm Bill.

To qualify for priority points for projects that contribute to increasing opportunities for veteran farmers and ranchers, applicants must submit form DD–214, Report of Separation from the U.S. Military and must meet the requirements of Beginning Farmer or Rancher at 7 CFR 4284.922(d) and in the application guides. Applicants applying under the Veteran Farmer and Rancher category must meet all other program requirements found in 7 CFR 4284, subpart J.

To ensure that all applicants are treated fairly, applicants who submitted an application in accordance with the original deadline may revise and resubmit their applications as necessary. Applicants who wish to revise their applications must resubmit their application by the extension deadline published in this Notice.

Dated: March 18, 2014.

Lillian Salerno,

Administrator, Rural Business—Cooperative Service.

[FR Doc. 2014–06668 Filed 3–24–14; 8:45 am]

BILLING CODE 3410–XY–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meetings of the New York Advisory Committee

Dates and Times: Friday, April 11, 2014, 12:00 p.m. [EST].

Friday, May 9, 2014, 12:00 p.m. [EST].

Friday, June 13, 2014, 12:00 p.m. [EST].

Place: Via Teleconference. Public Dial-in 1–877–446–3914; Listen Line Code: 5408739.

TDD: Dial Federal Relay Service 1–800–977–8339 give operator the following number: 202–376–7533—or by email at *ero@usccr.gov*.

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that planning meetings of the New York Advisory Committee to the Commission will convene via conference call on the above-referenced dates and times. The purpose of the meetings is to continue the Advisory Committee's project planning on the Advisory Committee's proposed review on disparate treatment of youth in the New York correctional system. The Advisory Committee will also discuss the recent settlement decision on the solitary confinement of incarcerated youth and the impact on the Advisory Committee's proposed review.

The meetings will be conducted via conference call. In order to reserve a sufficient number of lines, members of the public, including persons with hearing impairments, who wish to listen to the conference call, are asked to either call (202–376–7533) or email the Eastern Regional Office (ERO), (*ero@usccr.gov*) ten days in advance of each scheduled meeting. Persons with hearing impairments must first dial the Federal Relay Service *TDD:* 1–800–977–8339 and give the operator the Eastern Regional Office number (202–376–7533).

Members of the public who call-in can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number.

Members of the public are entitled to submit written comments. The comments must be received in the ERO by 30 days after each meeting date. Comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to Melanie Reingardt at *ero@usccr.gov*. Persons who desire additional information may contact the Eastern Regional Office at 202–376–7533.

Records generated from these meetings may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after each meeting. Persons

interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

The meetings will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated on March 20, 2014.

David Mussatt,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2014–06474 Filed 3–24–14; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Kentucky Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a planning meeting of the Kentucky Advisory Committee (Committee) to the Commission will be held on April 15, 2014, at the Louis D. Brandeis School of Law, University of Louisville, Louisville, KY 40292. The meeting is scheduled to begin at 10:00 a.m. and adjourn at approximately 12:00 noon. The purpose of the meeting is for the Committee to receive reports from the sub-committee on ex-felon voting rights and the sub-committee on school desegregation, discuss the ex-felon voting rights and school desegregation projects, and consider for approval any prepared draft reports by the sub-committees.

Members of the public are entitled to submit written comments. The comments must be received in the Southern Regional Office of the Commission by May 15, 2014. The address is: Southern Regional Office, U.S. Commission on Civil Rights, 61 Forsyth Street SW., Suite 16T126, Atlanta, GA 30303. Persons wishing to email their comments or who desire additional information should contact Peter Minarik, Regional Director of the Southern Regional Office, at (404) 562–7000 (or for hearing impaired TDD 913–551–1414), or by email to *pminarik@usccr.gov*. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Southern Regional Office at the above email or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated on March 20, 2014.

David Mussatt,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2014–06475 Filed 3–24–14; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: West Coast Region Longline Vessel Monitoring System and Pre-Trip Reporting Requirements.

OMB Control Number: 0648–0498.

Form Number(s): NA.

Type of Request: Regular submission (revision and extension of a current information collection).

Number of Respondents: 5.

Average Hours Per Response: Vessel Monitoring System (VMS) installation and certification, 3 hours; annual maintenance, 2 hours; pre-trip notifications, 5 minutes.

Burden Hours: 16.

Needs and Uses: This request is for a revision and extension of a currently approved information collection.

Owners of vessels that fish out of West Coast ports for highly migratory species such as tuna, billfish, and sharks are required to submit information about their intended and actual fishing activities. These submissions would allow the National Marine Fisheries Service (NMFS) and the Pacific Fishery Management Council to monitor the fisheries and determine the effects and effectiveness of the Fishery Management Plan (FMP) for U.S. West Coast Fisheries for Highly Migratory Species (HMS). Pre-trip reporting requirements are essential for effectively and efficiently assigning available observer coverage to selected HMS vessels. Data collected by observers are critical to evaluating if the objectives of the FMP are being achieved and for evaluating the impact of potential changes in management to respond to new information or new problems in the fisheries. Vessel Monitoring System (VMS) units will facilitate enforcement of closures associated with HMS fisheries and provide timely information on associated fleet activities.

Affected Public: Business or other for profit organizations.

Frequency: Daily and annually.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or faxed to (202) 395–5806.

Dated: March 20, 2014.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–06484 Filed 3–24–14; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–26–2014]

Foreign-Trade Zone (FTZ) 39—Dallas-Fort Worth, Texas; Application for Production Authority; CSI Calendering, Inc. (Rubber Coated Textile Fabric); Arlington, Texas

An application has been submitted to the Foreign-Trade Zones Board by the Dallas/Fort Worth International Airport Board, grantee of FTZ 39, requesting production authority on behalf of CSI Calendering, Inc. (CSI), located in Arlington, Texas. The application conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.23) was docketed on March 18, 2014.

The CSI facilities (56 employees) are located at 1119 Commercial Boulevard South and 1120 Commercial Boulevard North, Arlington (Tarrant County), Texas. A separate application for ''usage-driven'' site designation at the CSI facilities is planned and will be processed under Section 400.24 of the FTZ Board's regulations. The facilities are used for the calendering, slitting, and laminating of certain RFL

(resorcinol formaldehyde latex) textile fabrics, as detailed in the application. Production under FTZ procedures could exempt CSI from customs duty payments on the foreign RFL fabrics used in export production. On its domestic sales (currently 100% of shipments), CSI would be able to choose the duty rate during customs entry procedures that applies to rubber coated calendered fabrics (duty free) for the foreign RFL fabrics (duty rates: 12% and 13.6%). Customs duties also could possibly be deferred or reduced on foreign status production equipment. The request indicates that the savings from FTZ procedures would help improve the facilities' international competitiveness.

In accordance with the FTZ Board's regulations, Pierre Duy of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is May 27, 2014. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 9, 2014.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

FOR FURTHER INFORMATION CONTACT: Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: March 18, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–06578 Filed 3–24–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–25–2014]

Foreign-Trade Zone (FTZ) 90—Onondaga County, New York; Notification of Proposed Production Activity; PPC Broadband, Inc. (Coaxial Cable Connectors); Dewitt, New York

The Onondaga County Office of Economic Development, grantee of FTZ 90, submitted a notification of proposed production activity to the FTZ Board on behalf of PPC Broadband, Inc. (PPC Broadband), located in Dewitt, New York. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on March 10, 2014.

A separate application for subzone designation at the PPC Broadband facilities is being submitted and will be processed under Section 400.38 of the FTZ Board's regulations. The facilities are used for the production of coaxial cable connectors. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt PPC Broadband from customs duty payments on the foreign-status components used in export production. On its domestic sales, PPC Broadband would be able to choose the duty rate during customs entry procedures that applies to coaxial cable connectors (duty free) for the foreign-status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components and materials sourced from abroad include: connector posts, connector bodies, connector nuts, molded plastic connector parts, silicone o-rings, and rubber o-rings (duty rates are 2.5% or 3.5%).

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is May 5, 2014.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

FOR FURTHER INFORMATION CONTACT: Diane Finver at Diane.Finver@trade.gov or (202) 482–1367.

Dated: March 14, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–06584 Filed 3–24–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1934]

Foreign-Trade Zones 1 and 111, Merger and Reorganization under Alternative Site Framework, New York, New York

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the City of New York, grantee of Foreign-Trade Zones 1 and 111, submitted an application to the Board (FTZ Docket B–90–2013, docketed 10–21–2013) for authority to merge FTZs 1 and 111 under FTZ 1 and reorganize the merged zone under the ASF with a service area of New York, Bronx, Kings, Queens, and Richmond Counties, New York, in and adjacent to the New York/Newark and John F. Kennedy International Airport Customs and Border Protection ports of entry, FTZ 1's existing Sites 1, 2, 3 and 5 would be categorized as magnet sites, existing Site 4 as a usage-driven site, and existing Site 1 of FTZ 111 would be renumbered as Site 6 of FTZ 1 and categorized as a magnet site;

Whereas, notice inviting public comment was given in the **Federal Register** (78 FR 63963, 10–25–2013) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendation of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby orders:

The application to merge FTZ 1 and FTZ 111 under FTZ 1 and reorganize the merged zone under the ASF is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, to the Board's standard

2,000-acre activation limit for the zone, to a ten-year ASF sunset provision for a magnet site that would terminate authority for Site 6 if not activated by March 31, 2024, to a five-year ASF sunset provision for magnet sites that would terminate authority for Sites 2, 3 and 5 if not activated by March 31, 2019, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Site 4 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by March 31, 2017.

Signed at Washington, DC, this 18th day of March 2014.

Paul Piquado,

Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–06577 Filed 3–24–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–934]

1-Hydroxyethylidene-1, 1-Diphosphonic Acid From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on 1-hydroxyethylidene-1, 1-diphosphonic acid (''HEDP'') from the People's Republic of China (''PRC''). The period of review (''POR'') is April 1, 2012, through March 31, 2013. We preliminarily found that the only respondent, Shandong Taihe Chemicals Co., Ltd. (''STCC''), sold subject merchandise at less than normal value (''NV''). We invite interested parties to comment on these preliminary results.

DATES: Effective Date: March 25, 2014.

FOR FURTHER INFORMATION CONTACT: Jamie Blair-Walker, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230; telephone: (202) 482–2615.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to the order includes all grades of aqueous, acidic (non-neutralized) concentrations of 1-hydroxyethylidene-1, 1-diphosphonic acid,[1] also referred to as hydroxethylidenediphosphonic acid, hydroxyethanediphosphonic acid, acetodiphosphonic acid, and etidronic acid. The CAS (Chemical Abstract Service) registry number for HEDP is 2809–21–4. The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheading 2931.00.9043. It may also enter under HTSUS subheading 2811.19.6090. While HTSUS subheadings are provided for convenience and customs purposes only, the written description of the scope of the order is dispositive.

Extension of Deadlines for Preliminary Results

As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.[2] Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. If the new deadline falls on a non-business day, in accordance with the Department's practice, the deadline will become the next business day. On January 10, 2014, we extended the deadline for the preliminary results by an additional 60 days.[3] The revised deadline for the preliminary results of this review is now March 18, 2014.[4]

[1] $C_2H_8O_7P_2$ or $C(CH_3)(OH)(PO_3H_2)_2$

[2] *See* Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Shutdown of the Federal Government'' (October 18, 2013).

[3] *See* Memorandum from Jamie Blair-Walker through Abdelali Elouaradia to Christian Marsh regarding ''1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review'' (January 10, 2014).

[4] The deadline for the preliminary results of this review was March 17, 2014. Due to the closure of the Federal Government in Washington, DC on March 17, 2014, the Department reached this determination on the next business day (*i.e.,* March 18, 2014). *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

Methodology

The Department conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (''the Act''). Export prices and constructed export prices were calculated in accordance with section 772 of the Act. Because the PRC is a non-market economy (''NME'') within the meaning of section 771(18) of the Act, NV was calculated in accordance with section 773(c) of the Act.

For a full description of the methodology underlying our conclusions, please see the memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for the Preliminary Results of the 2012–2013 Administrative Review of the Antidumping Duty Order on 1-Hydroxyethylidene-1, 1-Diphosphonic Acid from the People's Republic of China (''Preliminary Decision Memorandum''), hereby adopted by this notice. 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 (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov.* The Preliminary Decision Memorandum is also available 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 at *http://enforcement.trade.gov/frn.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margin exists:

Exporter	Weighted-average dumping margin (percent)
STCC	43.58

Disclosure and Public Comment

The Department intends to disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice.[5] Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[6] Rebuttal briefs may be filed no later than five days after case briefs are filed and may respond only to arguments raised in the case briefs.[7] A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. Interested parties that wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice.[8] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a date and time to be determined.[9] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All submissions, with limited exceptions, must be filed electronically using IA ACCESS. An electronically filed document must be received successfully in its entirety by 5 p.m. Eastern Time (''ET'') on the due date. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with the APO/Dockets Unit in Room 1870 and stamped with the date and time of receipt by 5 p.m. ET on the due date.[10]

The Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries covered by this review.[11] The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. For any individually examined respondent whose weighted-average dumping margin is above *de minimis* (*i.e.,* 0.50 percent) in the final results of this review, the Department will calculate an importer-specific assessment rate on the basis of the ratio of the total amount of antidumping duties calculated for the importer's examined sales and the total entered value of sales, in accordance with 19 CFR 351.212(b)(1). In these preliminary results, the Department applied the assessment rate calculation method adopted in the *Final Modification for Reviews.*[12] Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer- (or customer-) 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 antidumping duty cases.[13] Pursuant to this refinement in practice, for merchandise that was not reported in the U.S. sales databases submitted by an exporter individually examined during this review, but that entered under the case number of that exporter (*i.e.,* at the individually-examined exporter's cash deposit rate), the Department will instruct CBP to liquidate such entries at the PRC-wide rate. Additionally, pursuant to this refinement, 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 will be liquidated at the PRC-wide rate.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For the company listed above the cash deposit rate will be the rate established in the final results of this review, except if the rate is zero or *de minimis* (*i.e.,* less than 0.5 percent), no cash deposit will be required; (2) for previously investigated 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 that for the PRC-wide entity; 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 that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also 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 Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

[5] *See* 19 CFR 351.224(b).

[6] *See* 19 CFR 351.309(c).

[7] *See* 19 CFR 351.309(d).

[8] *See* 19 CFR 351.310(c).

[9] *See* 19 CFR 351.310(d).

[10] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[11] *See* 19 CFR 351.212(b)(1).

[12] *See Antidumping Proceeding Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012) (''*Final Modification for Reviews.*'').

[13] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), for a full discussion of this practice.

Dated: March 18, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

1. Background
2. Scope of the Order
3. Selection of Respondents
4. Non-Market Economy Country
5. Separate Rate
6. Surrogate Country and Surrogate Value Data
7. Fair Value Comparisons
8. U.S. Price
9. Normal Value
10. Currency Conversion

[FR Doc. 2014–06570 Filed 3–24–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2012–2013

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) is conducting an administrative review of the antidumping duty order on stainless steel bar (SSB) from India.[1] The period of review (POR) is February 1, 2012, through January 31, 2013. This review covers three exporters/producers of the subject merchandise: Ambica Steels Limited (Ambica); Mukand, Ltd. (Mukand); and, Chandan Steel Limited (Chandan). We preliminarily determine that Ambica has not made sales of subject merchandise at prices below normal value (NV) during this POR. We are rescinding this review for Mukand and Chandan. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* March 25, 2014.

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230; telephone (202) 482–6478.

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 78 FR 19197 (March 29, 2013).

Scope of the Order

The merchandise subject to the order is SSB. The SSB subject to the order is currently classifiable under subheadings 7222.10.00, 7222.11.00, 7222.19.00, 7222.20.00, 7222.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. The written description is dispositive.[2]

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 (IA ACCESS). Access to IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and is 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/index.html.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), we are rescinding this administrative review with respect to Mukand and Chandan because the review requests were timely withdrawn.

Methodology

The Department conducted this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* Preliminary Decision Memorandum.

Preliminary Results of the Review

As a result of this review, we preliminarily determine the following weighted-average dumping margin exist for the respondent for the period February 1, 2012, through January 31, 2013.

Producer/exporter	Weighted-average dumping margin (percent)
Ambica Steels Limited ..	0.00

Disclosure and Public Comment

The Department intends to disclose to interested parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.[3] Pursuant to 19 CFR 351.309(c), interested parties may submit cases briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case briefs.[4] 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.[5] Case and rebuttal briefs should be filed using IA ACCESS.[6]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.[7] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs.

The Department intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

For Ambica, upon issuance of the final results, the Department shall determine, and the United States Customs and Border Protection (CBP)

[2] A full description of the scope of the order is contained in the memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India'' dated concurrently with this notice (Preliminary Decision Memorandum), which is hereby adopted by this notice.

[3] *See* 19 CFR 351.224(b).

[4] *See* 19 CFR 351.309(d).

[5] *See* 19 CFR 351.309(c)(2) and (d)(2).

[6] *See* 19 CFR 351.303.

[7] *See* 19 CFR 351.310(c).

shall assess, antidumping duties on all appropriate entries covered by this review. The Department also intends to issue appropriate assessment instructions to CBP 15 days after publication of the final results of this review.

Ambica reported the name of the importer of record and the entered value for some of its sales to the United States during the POR. If Ambica's weighted-average dumping margin remains zero or *de minimis* [8] in the final results 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. Pursuant to 19 CFR 351.212(b)(l), for these sales, if Ambica's weighted-average dumping margin is above *de minimis* (*i.e.,* 0.50 percent) in the final results of this review, we will calculate importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for each importer's examined sales to the total entered value of those sales, and we will instruct CBP to assess antidumping duties on all appropriate entries. Where Ambica did not report entered value, we will calculate importer-specific assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the POR produced by Ambica for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

For Mukand and Chandan, antidumping duties shall be assessed at rates equal to the rates for the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice.

[8] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101, 8102 (February 14, 2012).

Cash Deposit Requirements

The following cash deposit requirements for estimated antidumping duties will be effective upon publication of the notice of final results of administrative review for all shipments of SSB from India entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for Ambica will be the rate established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer has been covered in a prior complete segment of this proceeding, the cash deposit rate will be the rate established for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 12.45 percent, the ''all others'' rate established in the order.[9] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder and, with respect to companies which we rescind in part as a final reminder, to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

The Department is issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

[9] *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from India,* 59 FR 66915, 66921 (December 28, 1994).

Dated: March 18, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

Summary

Background

- Partial Rescission

Scope of the Order

Discussion of the Methodology

- Comparisons to Normal Value
  - A. Determination of Comparison Method
  - B. Results of Differential Pricing Analysis
- Product Comparisons
- Date of Sale
- Export Price
- Level of Trade
  - A. Analysis of Home Market Sales Level of Trade
  - B. Analysis of U.S. Sales Level of Trade
  - C. Level of Trade Determination
- Normal Value
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- Currency Conversion

[FR Doc. 2014–06569 Filed 3–24–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–837]

Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review; 2012

AGENCY: Enforcement and Compliance, formally Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on certain cut-to-length carbon-quality steel plate from the Republic of Korea (Korea). The period of review (POR) is January 1, 2012, through December 31, 2012. This review covers multiple exporters/producers; one of which is being individually examined as a mandatory respondent. We preliminary determine that Dongkuk Steel Mill Co., Ltd. (DSM) received a *de minimis* net subsidy rate during the POR. DSM's CVD rate has been used as the rate for

the five companies that remain subject to review. The Department also intends to rescind the review of five companies that timely certified that they had no shipments of subject merchandise to the United States during the POR. Interested parties are invited to comments on these preliminary results.

DATES: *Effective Date:* March 25, 2014.

FOR FURTHER INFORMATION CONTACT: John Conniff, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–1009.

Scope of the Order

The merchandise covered by the *Order*[1] is certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils).[2]

The merchandise subject to the *Order* is currently classifiable in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this *Order* is dispositive.[3]

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 (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and 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://www.trade.gov/ia/.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Methodology

For a complete description of the methodology see the Preliminary Decision Memorandum.

Intent to Partially Rescind Administrative Review

Between April 10 and May 23, 2013, we received timely filed no shipment certifications from Daewoo International Corp. (Daewoo), Dongbu Steel Co., Ltd. (Dongbu), GS Global Corp. (GS Global), Hyosung Corporation (Hyosung), and Hyundai Steel Co. (Hyundai). Because there is no evidence on the record to indicate that these companies had sales of subject merchandise during the POR, pursuant to 19 CFR 351.213(d)(3), the Department intends to rescind the review with respect to Daewoo, Dongbu, GS Global, Hyosung, and Hyundai. A final decision regarding whether to rescind on these companies will be made in the final results of this review.

Preliminary Results of the Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for the mandatory respondent, DSM. Because DSM is the sole, mandatory respondent, we preliminarily assigned to those companies not selected for individual review, the rate calculated for DSM. As a result of this review, we preliminarily determine the listed net subsidy rates for 2012:

Company	2012 *Ad valorem* rate
Dongkuk Steel Mill Co., Ltd	0.11% *de minimis.*
Edgen Murray Corporation	*de minimis.*
Kyoungil Col., Ltd	*de minimis.*
Samsung C&T Corporation	*de minimis.*
Samwoo EMC Co., Ltd	*de minimis.*
TCC Steel Corp	*de minimis.*

Disclosure and Public Comment

The Department will 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.[4] Interested parties may submit written arguments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs) within five days after the time limit for filing the case briefs.[5] Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) Statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice.[6] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing, which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, at a time and location to be determined.[7] Parties should confirm by telephone the date, time, and location of the hearing.

Parties are reminded that briefs and hearing requests are to be filed electronically using IA ACCESS and that electronically filed documents must be received successfully in their entirety by 5:00PM Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by parties in their comments, within 120 days after issuance of these preliminary results.

[1] *See Certain Cut-To-Length Carbon-Quality Steel Plate from India, Indonesia, and the Republic of Korea: Continuation of Antidumping and Countervailing Duty Orders,* 77 FR 264 (January 4, 2012) (the *Order*); *see also Notice of Amended Final Determination: Certain Cut–to-Length Carbon–Quality Steel Plate From India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut–to-Length Carbon–Quality Steel Plate From France, India, Indonesia, Italy, and the Republic of Korea,* 65 FR 6587 (February 10, 2000).

[2] *See* ''Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review: Certain Cut-to-Length Carbon-Quality Steel Plated from the Republic of Korea,'' from Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, dated concurrently with this notice (Preliminary Decision Memorandum) for a complete description of the scope of the *Order.*

[3] *See Order.*

[4] *See* 19 CFR 351.224(b).

[5] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1).

[6] *See* 19 CFR 351.310(c).

[7] *See* 19 CFR 351.310.

Assessment Rates

The Department intends to issue assessment instructions to U.S. Customs and Border Protection (CBP) 15 days after the date of publication of the final results of this review. If the final results remain the same as these preliminary results, the Department will instruct CBP to liquidate without regard to CVDs all shipments of subject merchandise produced by Dongkuk Steel Mill Co., Ltd., Edgen Murray Corporation, Kyoungil Col., Ltd., Samsung C&T Corporation, Samwoo EMC Co., Ltd., and TCC Steel Corp entered, or withdrawn from warehouse, for consumption from January 1, 2012, through December 31, 2012.

Cash Deposit Instructions

The Department also intends to instruct CBP to collect cash deposits of zero percent on shipments of the subject merchandise produced and/or exported by Dongkuk Steel Mill Co., Ltd., Edgen Murray Corporation, Kyoungil Col., Ltd., Samsung C&T Corporation, Samwoo EMC Co., Ltd., and TCC Steel Corp entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company. These cash deposit requirements, when imposed, shall remain in effect until further notice.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: March 18, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum:

1. Summary
2. Background
3. Scope of the Order
4. Preliminary Intent to Rescind with Respect to Daewoo, Dongbu, Hyosung, Hyundai, and GS Global
5. Non-Selected Rate
6. Attribution of Subsidies
7. Analysis of Programs
A. Programs Preliminarily Determined to be Countervailable
1. Local Tax Exemption on Land Outside Metropolitan Areas
2. GOK Facilities Investment Support Under Article 26 Restriction of Special Taxation Act (RSTA) Article 26
B. Programs Preliminarily Determined Not to Confer a Benefit
1. Various Grants Contained in DSM's Financial Statement
2. GOK Reimbursements for Wharfage Fee Expenses DSM Incurred in Developing the Asan Bay Port Facility
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1. Short-Term Discounted Loans for Export Granted by the Korean Development Bank (KDB)
2. Funds Provided under the Energy Savings Program
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• GOK Infrastructure Investment at Inchon North Harbor
• Reserve for Investment (Special Case of Tax for Balanced Development Among Areas)TERCL Articles 42, 43, 44, and 45
• Price Discounts for DSM Land Purchase at Asan Bay
• Exemption of VAT on Imports of Anthracite Coal
• Provision of Land for Less than Adequate Remuneration in the Godae Complex
• Lease Discounts Provided to Companies Operating in Free Economic Zones
• Tax Reductions Granted to Companies Operating in the Godae Complex
• Tax Subsidies Provided to Companies Operating in Free Economic Zones Government Grants and Financial Support to Companies Operating in Free Economic Zones
8. Recommendation

[FR Doc. 2014–06566 Filed 3–24–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–840]

Certain Frozen Warmwater Shrimp From India; Preliminary Results of Antidumping Duty Administrative Review; 2012–2013

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) is conducting an administrative review of the antidumping duty order on certain frozen warmwater shrimp (shrimp) from India.[1] The review covers 205 producers/exporters of the subject merchandise. The Department selected two mandatory respondents for individual examination, Devi Fisheries Limited (Devi Fisheries) and Falcon Marine Exports Limited (Falcon). The period of review (POR) is February 1, 2012, through January 31, 2013. We preliminarily determined that sales to the United States have been made below normal value (NV) and, therefore, are subject to antidumping duties. If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. We invite all interested parties to comment on these preliminary results.

DATES: *Effective Date:* March 25, 2014.

FOR FURTHER INFORMATION CONTACT: David Crespo or Elizabeth Eastwood, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3693, or (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to the order is certain frozen warmwater shrimp.[2] The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. Although the HTSUS numbers are provided for convenience and for customs purposes, the written product description remains dispositive.

Methodology

The Department conducted this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act.

[1] The deadline for the preliminary results of this review was March 17, 2014. Due to the closure of the Federal Government in Washington, DC on March 17, 2014, the Department reached this determination on the next business day (*i.e.,* March 18, 2014). *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

[2] For a complete description of the Scope of the Order, see the memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled, ''Decision Memorandum for the Preliminary Results of the 2012–2013 Administrative Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from India,'' (dated concurrently with these results) (Preliminary Decision Memorandum), which is hereby adopted by this notice.

For a full description of the methodology underlying our conclusions, 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 (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and 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 at *http://enforcement.trade.gov/frn/index.html.* The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that weighted-average dumping margins exist for the respondents for the period February 1, 2012, through January 31, 2013, as follows:

Review-Specific Average Rate Applicable to the Following Companies:[3]

Manufacturer/exporter	Percent margin
Devi Fisheries Limited	1.97
Falcon Marine Exports Limited/K.R. Enterprises	3.01

Manufacturer/exporter	Percent margin
Abad Fisheries	2.49
Accelerated Freeze-Drying Co	2.49
Adilakshmi Enterprises	2.49
Allana Frozen Foods Pvt. Ltd	2.49
Allanasons Ltd	2.49
AMI Enterprises	2.49
Amulya Seafoods	2.49
Anand Aqua Exports	2.49
Ananda Aqua Applications/Ananda Aqua Exports (P) Limited/Ananda Foods	2.49
Andaman Sea Foods Pvt. Ltd	2.49
Angelique Intl	2.49
Anjaneya Seafoods	2.49
Apex Frozen Foods Private Limited	2.49
Arvi Import & Export	2.49
Asvini Exports	2.49
Asvini Fisheries Private Limited	2.49
Avanti Feeds Limited	2.49
Ayshwarya Seafood Private Limited	2.49
Baby Marine Exports	2.49
Baby Marine International	2.49
Baby Marine Sarass	2.49
Balasore Marine Exports Private Limited	2.49
Bhatsons Aquatic Products	2.49
Bhavani Seafoods	2.49
Bijaya Marine Products	2.49
Blue Fin Frozen Foods Pvt. Ltd	2.49
Blue Water Foods & Exports P. Ltd	2.49
Bluefin Enterprises	2.49
Bluepark Seafoods Private Ltd	2.49
BMR Exports	2.49
Britto Exports	2.49
C P Aquaculture (India) Ltd	2.49
Calcutta Seafoods Pvt. Ltd	2.49
Canaan Marine Products	2.49
Capithan Exporting Co.	2.49
Castlerock Fisheries Ltd	2.49
Chemmeens (Regd)	2.49
Cherukattu Industries (Marine Div.)	2.49
Choice Canning Company	2.49
Choice Trading Corporation Private Limited	2.49
Coastal Aqua	2.49
Coastal Corporation Ltd	2.49
Cochin Frozen Food Exports Pvt. Ltd	2.49

[3] This rate is based on the simple average of the margins calculated for those companies selected for individual review. Because we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business proprietary information, we find this rate to be the best proxy of the actual weighted-average margin determined for the mandatory respondents. *See Ball Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (Sept. 1, 2010); *see also* the memorandum from David Crespo, International Trade Compliance Analyst, to the File, entitled, ''Calculation of the Review-Specific Average Rate in the 2012–2013 Administrative Review of Certain Frozen Warmwater Shrimp from India,'' (dated concurrently with these results).

[4] Shrimp produced and exported by Devi Sea Foods (Devi) was excluded from this order effective February 1, 2009. *See Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Notice of Revocation of Order in Part,* 75 FR 41813, 41814 (July 19, 2010). However, shrimp produced by other Indian producers and exported by Devi remain subject to the order. Thus, this administrative review with respect to Devi covers only shrimp which was produced in India by other companies and exported by Devi.

Manufacturer/exporter	Percent margin
Coreline Exports	2.49
Corlim Marine Exports Pvt. Ltd	2.49
D2 D Logistics Private Limited	2.49
Damco India Private	2.49
Delsea Exports Pvt. Ltd	2.49
Devi Marine Food Exports Private Ltd./Kader Exports Private Limited/Kader Investment and Trading Company Private Limited/Liberty Frozen Foods Pvt. Ltd./Liberty Oil Mills Ltd./Premier Marine Products/Universal Cold Storage Private Limited	2.49
Devi Sea Foods Limited [4]	2.49
Diamond Seafood Exports/Edhayam Frozen Foods Pvt. Ltd./Kadalkanny Frozen Foods/Theva & Company	2.49
Digha Seafood Exports	2.49
Esmario Export Enterprises	2.49
Exporter Coreline Exports	2.49
Five Star Marine Exports Private Limited	2.49
Forstar Frozen Foods Pvt. Ltd	2.49
Frontline Exports Pvt. Ltd	2.49
G A Randerian Ltd	2.49
Gadre Marine Exports	2.49
Galaxy Maritech Exports P. Ltd	2.49
Gayatri Seafoods	2.49
Geo Aquatic Products (P) Ltd	2.49
Geo Seafoods	2.49
Goodwill Enterprises	2.49
Grandtrust Overseas (P) Ltd	2.49
GVR Exports Pvt. Ltd	2.49
Haripriya Marine Export Pvt. Ltd	2.49
Harmony Spices Pvt. Ltd	2.49
HIC ABF Special Foods Pvt. Ltd	2.49
Hindustan Lever, Ltd	2.49
Hiravata Ice & Cold Storage	2.49
Hiravati Exports Pvt. Ltd	2.49
Hiravati International Pvt. Ltd. (located at APM—Mafco Yard, Sector—18, Vashi, Navi, Mumbai—400 705, India)	2.49
Hiravati International Pvt. Ltd. (located at Jawar Naka, Porbandar, Gujarat, 360 575, India)	2.49
Hiravati Marine Products Private Limited	2.49
IFB Agro Industries Ltd	2.49
Indian Aquatic Products	2.49
Indo Aquatics	2.49
Innovative Foods Limited	2.49
International Freezefish Exports	2.49
Interseas	2.49
ITC Limited, International Business	2.49
ITC Ltd	2.49
Jagadeesh Marine Exports	2.49
Jaya Satya Marine Exports	2.49
Jaya Satya Marine Exports Pvt. Ltd	2.49
Jayalakshmi Sea Foods Private Limited	2.49
Jinny Marine Traders	2.49
Jiya Packagings	2.49
K R M Marine Exports Ltd	2.49
K V Marine Exports	2.49
Kalyan Aqua & Marine Exp. India Pvt. Ltd	2.49
Kalyanee Marine	2.49
Kanch Ghar	2.49
Kay Kay Exports	2.49
Kings Marine Products	2.49
Koluthara Exports Ltd	2.49
Konark Aquatics & Exports Pvt. Ltd	2.49
Landauer Ltd	2.49
LCL Logistix (India) Private Limited	2.49
Libran Cold Storages (P) Ltd	2.49
Lighthouse Trade Links Pvt. Ltd	2.49
Magnum Estates Limited	2.49
Magnum Export	2.49
Magnum Sea Foods Limited	2.49
Malabar Arabian Fisheries	2.49
Malnad Exports Pvt. Ltd	2.49
Mangala Marine Exim India Pvt. Ltd	2.49
Mangala Sea Products	2.49
Meenaxi Fisheries Pvt. Ltd	2.49
MSC Marine Exporters	2.49
MSRDR Exports	2.49
MTR Foods	2.49
N.C. John & Sons (P) Ltd	2.49
Naga Hanuman Fish Packers	2.49
Naik Frozen Foods	2.49

Manufacturer/exporter	Percent margin
Naik Seafoods Ltd	2.49
Navayuga Exports	2.49
Nekkanti Sea Foods Limited	2.49
Nezami Rekha Sea Food Private Limited	2.49
NGR Aqua International	2.49
Nila Sea Foods Pvt. Ltd	2.49
Nine Up Frozen Foods	2.49
Overseas Marine Export	2.49
Paragon Sea Foods Pvt. Ltd	2.49
Parayil Food Products Pvt., Ltd	2.49
Penver Products Pvt. Ltd	2.49
Pesca Marine Products Pvt., Ltd	2.49
Pijikay International Exports P Ltd	2.49
Pisces Seafood International	2.49
Premier Exports International	2.49
Premier Marine Foods	2.49
Premier Seafoods Exim (P) Ltd	2.49
R V R Marine Products Limited	2.49
Raa Systems Pvt. Ltd	2.49
Raju Exports	2.49
Ram's Assorted Cold Storage Ltd	2.49
Raunaq Ice & Cold Storage	2.49
Raysons Aquatics Pvt. Ltd	2.49
Razban Seafoods Ltd	2.49
RBT Exports	2.49
RDR Exports	2.49
Riviera Exports Pvt. Ltd	2.49
Rohi Marine Private Ltd	2.49
S & S Seafoods	2.49
S. A. Exports	2.49
S Chanchala Combines	2.49
Safa Enterprises	2.49
Sagar Foods	2.49
Sagar Grandhi Exports Pvt. Ltd	2.49
Sagar Samrat Seafoods	2.49
Sagarvihar Fisheries Pvt. Ltd	2.49
SAI Marine Exports Pvt. Ltd	2.49
SAI Sea Foods	2.49
Sanchita Marine Products P Limited	2.49
Sandhya Aqua Exports	2.49
Sandhya Aqua Exports Pvt. Ltd	2.49
Sandhya Marines Limited	2.49
Santhi Fisheries & Exports Ltd	2.49
Sarveshwari Exp	2.49
Sarveshwari Ice & Cold Storage Pvt. Ltd	2.49
Sawant Food Products	2.49
Seagold Overseas Pvt. Ltd	2.49
Selvam Exports Private Limited	2.49
Sharat Industries Ltd	2.49
Shimpo Exports Pvt. Ltd	2.49
Shippers Exports	2.49
Shiva Frozen Food Exp. Pvt. Ltd	2.49
Shree Datt Aquaculture Farms Pvt. Ltd	2.49
Shroff Processed Food & Cold Storage P Ltd	2.49
Silver Seafood	2.49
Sita Marine Exports	2.49
Sowmya Agri Marine Exports	2.49
Sprint Exports Pvt. Ltd	2.49
Sri Chandrakantha Marine Exports	2.49
Sri Sakkthi Cold Storage	2.49
Sri Sakthi Marine Products P Ltd	2.49
Sri Satya Marine Exports	2.49
Sri Venkata Padmavathi Marine Foods Pvt. Ltd	2.49
Srikanth International	2.49
SSF Ltd	2.49
Star Agro Marine Exports Private Limited	2.49
Star Organic Foods Incorporated	2.49
Sun-Bio Technology Ltd	2.49
Suryamitra Exim Pvt. Ltd	2.49
Suvarna Rekha Exports Private Limited	2.49
Suvarna Rekha Marines P Ltd	2.49
TBR Exports Pvt Ltd	2.49
Teekay Marine P. Ltd	2.49
Tejaswani Enterprises	2.49

Manufacturer/exporter	Percent margin
The Waterbase Ltd	2.49
Triveni Fisheries P Ltd	2.49
Uniroyal Marine Exports Ltd	2.49
Unitriveni Overseas	2.49
V.S Exim Pvt Ltd	2.49
Vasista Marine	2.49
Veejay Impex	2.49
Victoria Marine & Agro Exports Ltd	2.49
Vinner Marine	2.49
Vishal Exports	2.49
Wellcome Fisheries Limited	2.49
West Coast Frozen Foods Private Limited	2.49
Z A Sea Foods Pvt. Ltd	2.49

Disclosure and Public Comment

The Department intends to disclose to interested parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice.[5] Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[6] 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.[7] Case and rebuttal briefs should be filed using IA ACCESS.[8]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice.[9] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b)(1).

For Devi Fisheries and Falcon, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales. *See* 19 CFR 351.212(b)(1).

For the companies which were not selected for individual review, we will calculate an assessment rate based on the weighted-average of the cash deposit rates calculated for the companies selected for mandatory review (*i.e.,* Devi Fisheries and Falcon) excluding any which are *de minimis* or determined entirely on adverse facts available.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis.* Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis.* 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. *See* section 751(a)(2)(C) of the Act.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the POR produced by Devi Fisheries or Falcon for which these companies did not know that the merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

We intend to issue instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 10.17 percent, the all-others rate made effective by the LTFV investigation.[10] These deposit requirements, when

[5] *See* 19 CFR 351.224(b).

[6] *See* 19 CFR 351.309(d).

[7] *See* 19 CFR 351.309(c)(2) and (d)(2).

[8] *See* 19 CFR 351.303.

[9] *See* 19 CFR 351.310(c).

[10] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp From India,* 70 FR 5147, 5148 (Feb. 1, 2005).

imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary 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 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 results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 18, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Scope of the Order
4. Discussion of the Methodology
   a. Fair Value Comparisons
   b. Determination of Comparison Method
   c. Product Comparisons
   d. Export Price
   e. Normal Value
5. Currency Conversion
6. Recommendation

[FR Doc. 2014–06559 Filed 3–24–14; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–583–852]

Non-Oriented Electrical Steel from Taiwan: Preliminary Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of non-oriented electrical steel (NOES) from Taiwan. The period of investigation (POI) is January 1, 2012, through December 31, 2012. Interested parties are invited to comment on this preliminary determination.[1]

DATES: *Effective Date:* March 25, 2014.

FOR FURTHER INFORMATION CONTACT: Patricia Tran and Christopher Hargett, Office III, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1503 and (202) 482–4161, respectively.

SUPPLEMENTARY INFORMATION:

Alignment of Final Countervailing Duty (CVD) Determination With Final Antidumping Duty (AD) Determination

On the same day that the Department initiated this countervailing duty (CVD) investigation, the Department also initiated antidumping duty (AD) investigations of NOES from Germany, Japan, the People's Republic of China (PRC), the Republic of Korea, Sweden, and Taiwan.[2] The CVD investigation and the AD investigations cover the same merchandise. On March 11, 2014, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (Act), alignment of the final CVD determination with the final AD determination of NOES from Taiwan was requested by the petitioner.[3] Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we are aligning the final CVD determination with the final AD determination. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than July 29, 2014, unless postponed.

Scope of the Investigation

The merchandise subject to this investigation 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. For a complete description of the scope of the investigation, *see* Appendix 1 to this notice.

Methodology

The Department is conducting this CVD investigation in accordance with section 701 of the Act. For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.[4] 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 (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov,* and is 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 the electronic versions of the Preliminary Decision Memorandum are identical in content.

For this preliminary determination, we have relied on facts available for Leicong Industrial Co., Ltd. (Leicong), a mandatory respondent, because the company did not act to the best of its ability and respond to the Department's requests for information. Further, we have drawn an adverse inference in selecting from among the facts otherwise available to calculate the *ad valorem* rate for Leicong.[5] For further information, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

The Department's analysis of program usage by China Steel Corporation (CSC), a mandatory respondent, and its cross-owned affiliates HiMag Magnetic Corporation (HIMAG), and China Steel Global Trading Corporation (CSGT) (collectively, CSC Companies), is also contained in the Preliminary Decision Memorandum.

[1] The deadline for the preliminary determination of this investigation was March 17, 2014. Due to the closure of the Federal Government in Washington, DC on March 17, 2014, the Department reached this determination on the next business day (*i.e.,* March 18, 2014). *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

[2] *See Non-Oriented Electrical Steel From the People's Republic of China, the Republic of Korea, and Taiwan: Initiation of Countervailing Duty Investigations,* 78 FR 68412 (November 14, 2013) and *Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Initiation of Antidumping Duty Investigations,* 78 FR 69041 (November 18, 2013).

[3] *See* Letter from Petitioner regarding ''Non-Oriented Electrical Steel from Taiwan: Request to Align,'' (March 11, 2014).

[4] *See* Memorandum from Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, regarding ''Decision Memorandum for the Preliminary Determination in the Countervailing Duty Investigation Non-Oriented Electrical Steel from Taiwan,'' dated concurrently with this notice (Preliminary Decision Memorandum).

[5] *See* sections 776(a) and (b) of the Act.

Preliminary Determination and Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated a CVD rate for each individually investigated producer/exporter of the subject merchandise. For companies not individually investigated, we calculated an all others rate as described in the Preliminary Decision Memorandum.

We preliminarily determine the countervailable subsidy rates to be:

Company	Subsidy rate
China Steel Corporation (CSC), HiMag Magnetic Corporation (HIMAG), and China Steel Global Trading Corporation (CSGT) (collectively, CSC Companies).	0.15 percent (*de minimis*).
Leicong Industrial Co., Ltd. (Leicong)	12.82 percent.
All Others	6.41 percent.

With the exception of entries from the CSC Companies, in accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of NOES from Taiwan that are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit for such entries of the merchandise in the amounts indicated above. Because we preliminarily determine that the CVD rate in this investigation for the CSC Companies is *de minimis,* we will not direct CBP to suspend liquidation of the CSC Companies' entries of the subject merchandise from Taiwan.

In accordance with sections 703(d) and 705(c)(5)(A)(i) of the Act, for companies not investigated, we apply an ''all-others'' rate equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act. As indicated above, for this preliminary determination, we have calculated a *de minimis* countervailable subsidy rate for the CSC Companies and a countervailable subsidy rate for Leicong based entirely on adverse facts available (AFA) as provided under section 776(b) of the Act. Where the rates for the investigated companies are all zero or *de minimis* or based entirely on AFA, section 705(c)(5)(A)(ii) of the Act instructs the Department to establish an all-others rate using ''any reasonable method.'' We preliminarily determine that a reasonable method for establishing the all-other rate is to calculate a simple average of the *de minimis* net subsidy rate calculated for the CSC companies and the total AFA rate assigned to Leicong.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted by the respondents prior to making our final determination.

Disclosure and Public Comment

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of public announcement of this determination.[6] Interested parties may submit case and rebuttals briefs, as well as request a hearing.[7] For a schedule of the deadlines for filing case briefs, rebuttal briefs, and hearing request, *see* the Preliminary Determination Memorandum.

International Trade Commission Notification

In accordance with section 703(f) of the Act, we will notify the International Trade Commission (ITC) of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

[6] *See* 19 CFR 351.224(b).

[7] *See* 19 CFR 351.309, 19 CFR 351.310.

Dated: March 18, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix 1

Scope of the Investigation

The merchandise subject to this investigation 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'' in the prior sentence 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 Oesteds) along (*i.e.,* parallel to) the rolling direction of the sheet (*i.e.,* B_{800} value). NOES contains by weight at least 1.25 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 is subject to this investigation whether it is fully processed (fully annealed to develop final magnetic properties) or semi-processed (finished to final thickness and physical form but not fully annealed to develop final magnetic properties); whether or not it is coated (*e.g.,* with enamel, varnish, natural oxide surface, chemically treated or phosphate surface, or other non-metallic materials). 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 this investigation is not limited to merchandise meeting the specifications noted above.

NOES is sometimes referred to as cold-rolled non-oriented electrical steel (CRNO), non-grain oriented (NGO), non-oriented (NO), or cold-rolled non-grain oriented (CRNGO). These terms are interchangeable.

The subject merchandise is provided for in subheadings 7225.19.0000, 7226.19.1000, and 7226.19.9000 of the Harmonized Tariff Schedule of the United States (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.

Appendix 2

List of Topics Discussed in the Preliminary Decision Memorandum

1. Scope Comments
2. Scope of the Investigation
3. Injury Test
4. Subsidies Valuation
5. Use of Facts Otherwise Available and Adverse Inferences
6. Analysis of Programs
7. Calculation of the All Others Rate
8. Disclosure and Public Comment
9. Verification

[FR Doc. 2014–06587 Filed 3–24–14; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–886]

Polyethylene Retail Carrier Bags From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that imports of unfinished polyethylene retail carrier bags (PRCBs) from the People's Republic of China (PRC) are circumventing the antidumping duty order on PRCBs from the PRC.[1]

DATES: *Effective Date:* March 25, 2014

FOR FURTHER INFORMATION CONTACT: Thomas Schauer or Minoo Hatten, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230; telephone: (202) 482–0410, and (202)482–1690, respectively.

Background

We published the affirmative preliminary determination on December 17, 2013, finding that imports of unfinished PRCBs from the PRC are circumventing the *Order,* pursuant to section 781(a) of the Act and 19 CFR 351.225(g).[2] In the *Preliminary Determination,* we relied on the facts available with respect to certain aspects of our determination in accordance with section 776 of the Act because, apart from the petitioners, no parties came forward or submitted argument or information.[3] In addition, we stated in the *Preliminary Determination* that ''{i}n the interest of affording every possible opportunity to interested parties to participate, the Department continues to invite all interested parties to identify themselves and to provide information and argument that may inform the Department's determination'' [4] as well as comment on the *Preliminary Determination.* However, no interested party such as a foreign exporter or producer or U.S. importer responded to these invitations to participate in this circumvention inquiry.

We also invited interested parties to comment on the *Preliminary Determination.* We received no comments.

Scope of the Order

The merchandise subject to the *Order* is PRCBs which may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm). PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.,* grocery, drug, convenience, department, specialty retail, discount stores, and restaurants, to their customers to package and carry their purchased products. The scope of the order excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments, e.g., garbage bags, lawn bags, trash-can liners. Imports of the subject merchandise are currently classifiable under statistical category 3923.21.0085 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading also covers products that are outside the scope of the order. Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Scope of the Circumvention Inquiry

This circumvention inquiry covers merchandise from the PRC that appears to be an unfinished PRCB which is sealed on all four sides, cut to length, and which appears ready to undergo the final step in the production process, *i.e.,* to use a die press to stamp out the opening and create the handles of a PRCB. The unfinished PRCBs subject to this inquiry may or may not have printing and may be of different dimensions as long as they meet the description of the scope of the order.

Final Determination

In the *Preliminary Determination,* we determined that imports of unfinished PRCBs from the PRC are circumventing the *Order.* Specifically, we determined that imports of unfinished PRCBs from the PRC are being completed and sold in the United States pursuant to the statutory and regulatory criteria laid out in section 781(a) of the Act and 19 CFR 351.225(g). We based our *Preliminary Determination* upon evidence which the petitioners placed on the record of the proceeding, and, in addition, we relied on the facts available with respect to certain aspects of our determination in accordance with section 776 of the Act because, apart from the petitioners, no parties came forward or submitted argument or information. For a complete discussion of the evidence which led to our preliminary determination with respect to each of these factors, see the *Preliminary Determination Memorandum.*[5]

Because no party provided any additional information or comment contradicting our *Preliminary Determination,* our final determination remains unchanged from the *Preliminary Determination.* Accordingly, we determine, pursuant to section 781(a) of the Act and 19 CFR 351.225(g), that imports of unfinished

[1] *See Antidumping Duty Order: Polyethylene Retail Carrier Bags From the People's Republic of China,* 69 FR 48201 (August 9, 2004) (*Order*).

[2] *See Polyethylene Retail Carrier Bags From the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order,* 78 FR 76280 (December 17, 2013) (*Preliminary Determination*).

[3] *Id.,* 78 FR at 76281.

[4] *Id.*

[5] *See* Memorandum from Gary Taverman to Paul Piquado, ''Preliminary Analysis Memorandum for the Circumvention Inquiry of the Antidumping Duty Order on Polyethylene Retail Carrier Bags from the People's Republic of China'' (December 10, 2013) (*Preliminary Determination Memorandum*).

PRCBs from the PRC are circumventing the *Order.*

Continuation of Suspension of Liquidation

As a result of this determination, and consistent with 19 CFR 351.225(l)(3), we are continuing to direct Customs and Border Protection to suspend liquidation and to require a cash deposit of estimated duties at the applicable rate on unliquidated entries of merchandise subject to this inquiry that are entered, or withdrawn from warehouse, for consumption on or after May 14, 2013, the date of publication of the initiation of this inquiry.[6]

Notification to Interested Parties

This notice serves as the only reminder to parties subject to the 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. 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.

This determination of circumvention is in accordance with section 781(a) of the Act and 19 CFR 351.225(g).

Dated: March 19, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–06567 Filed 3–24–14; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–997]

Non-Oriented Electrical Steel From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers/exporters of non-oriented electrical steel (NOES) from the People's Republic of China (PRC). The Department also preliminarily determines critical circumstances exist for imports of the subject merchandise from the PRC. The period of investigation is January 1, 2012, through December 31, 2012. Interested parties are invited to comment on this preliminary determination.

DATES: *Effective Date:* March 25, 2014.

FOR FURTHER INFORMATION CONTACT: Joshua Morris or Thomas Schauer, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1779 and (202) 482–0410, respectively.

SUPPLEMENTARY INFORMATION:

Alignment of Final Countervailing Duty (CVD) Determination With Final Antidumping Duty (AD) Determination

On the same day the Department initiated this CVD investigation, the Department also initiated AD investigations of NOES from the PRC and several other countries.[1] The CVD investigation and the AD investigations cover the same merchandise. On March 11, 2014, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), alignment of the final CVD determination with the final AD determination of NOES from the PRC was requested by AK Steel Corporation (Petitioner). Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we are aligning the final CVD determination with the final AD determination. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than July 29, 2014, unless postponed.

Scope of the Investigation

The merchandise subject to this investigation 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. For a complete description of the scope of the investigation, *see* Appendix 1 to this notice.

Critical Circumstances

On February 25, 2014, Petitioner alleged that critical circumstances exist with respect to imports of NOES from the PRC. In accordance with 19 CFR 351.206(c)(2)(i), because Petitioner submitted a critical circumstances allegation more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary critical circumstances determination not later than the date of the preliminary determination.[2]

In accordance with section 703(e)(1) of the Act, we preliminarily find critical circumstances exist with respect to Baoshan Iron & Steel Co., Ltd. (Baoshan) and all other producers/exporters. For a full discussion of our preliminary critical circumstances determination, *see* the ''Critical Circumstances'' section of the Preliminary Decision Memorandum.[3] 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 (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov,* and is 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://www.trade.gov/enforcement/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Methodology

The Department is conducting this countervailing duty investigation in accordance with section 701 of the Act. For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.

For this preliminary determination, we have relied on facts available for the

[6] *See Initiation Notice.*

[1] *See Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Initiation of Antidumping Duty Investigations,* 78 FR 69041 (November 18, 2013).

[2] *See, e.g., Change in Policy Regarding Timing of Issuance of Critical Circumstances Determinations,* 63 FR 55364 (October 15, 1998).

[3] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, regarding ''Decision Memorandum for the Preliminary Determination in the Countervailing Duty Investigation of Non-Oriented Electrical Steel from the People's Republic of China'' dated concurrently with this notice (Preliminary Decision Memorandum).

Government of the PRC and for Baoshan, the only mandatory company-respondent, because they did not act to the best of their abilities and respond to the Department's requests for information. Further, we have drawn an adverse inference in selecting from among the facts otherwise available to calculate the *ad valorem* rate for Baoshan.[4] For further information, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

Preliminary Determination and Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we calculated a countervailing duty rate for the individually investigated producer/exporter of the subject merchandise, Baoshan.

With respect to the all-others rate, section 705(c)(5)(A)(ii) of the Act provides that if the countervailable subsidy rates established for all exporters and producers individually investigated are determined entirely in accordance with section 776 of the Act, the Department may use any reasonable method to establish an all-others rate for exporters and producers not individually investigated. In this case, the rate calculated for the investigated company is based entirely on facts available under section 776 of the Act. There is no other information on the record upon which to determine an all-others rate. As a result, we have used the adverse facts available rate assigned for Baoshan as the all-others rate. This method is consistent with the Department's past practice.[5]

We preliminarily determine the countervailable subsidy rates to be:

Company	Subsidy rate (percent)
Baoshan Iron & Steel Co., Ltd.	125.83
All Others	125.83

As noted above, the Department found that critical circumstances exist with respect to all companies. Therefore, in accordance with sections 703(e)(2) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of NOES from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date 90 days prior to the date of publication of this notice in the **Federal Register,** and to require a cash deposit for such entries.

Disclosure and Public Comment

Because the Department has reached its conclusions on the basis of adverse facts available, the calculations performed in connection with this preliminary determination are not proprietary in nature, and are described in the Preliminary Decision Memorandum. Case briefs or other written comments for all non-scope issues may be submitted to IA ACCESS no later than 30 days after the publication of this preliminary determination in the **Federal Register,** and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[6] Case briefs or other written comments on scope issues may be submitted no later than 30 days after the publication of this preliminary determination in the **Federal Register,** and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for the case briefs. For any briefs filed on scope issues, parties must file separate and identical documents on each of the records for all of the concurrent antidumping and countervailing duty investigations.

Interested parties who wish to request a hearing, or to participate if one is requested, must do so in writing within 30 days after the publication of this preliminary determination in the **Federal Register**.[7] Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time and location of any hearing.

U.S. International Trade Commission (ITC) Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act.

Dated: March 18, 2014

Paul Piqued,

Assistant Secretary for Enforcement and Compliance.

Appendix 1

Scope of the Investigation

The merchandise subject to this investigation 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'' in the prior sentence 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 Oesteds) along (*i.e.,* parallel to) the rolling direction of the sheet (*i.e.,* B800 value). NOES contains by weight at least 1.25 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 is subject to this investigation whether it is fully processed (fully annealed to develop final magnetic properties) or semi-processed (finished to final thickness and physical form but not fully annealed to develop final magnetic properties); whether or not it is coated (*e.g.,* with enamel, varnish, natural oxide surface, chemically treated or phosphate surface, or other non-metallic materials). 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 this investigation is not limited to merchandise meeting the specifications noted above.

NOES is sometimes referred to as cold-rolled non-oriented electrical steel (CRNO), non-grain oriented (NGO), non-oriented (NO), or cold-rolled non-grain oriented (CRNGO). These terms are interchangeable.

The subject merchandise is provided for in subheadings 7225.19.0000, 7226.19.1000, and 7226.19.9000 of the Harmonized Tariff

[4] *See* sections 776(a) and (b) of the Act.

[5] *See, e.g., Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Argentina,* 66 FR 37007, 37008 (July 16, 2001); *see also Final Affirmative Countervailing Duty Determination: Prestressed Concrete Steel Wire Strand From India,* 68 FR 68356 (December 8, 2003).

[6] *See* 19 CFR 351.309.

[7] *See* 19 CFR 351.310(c).

Schedule of the United States (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.

Appendix 2

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Critical Circumstances
4. Scope Comments
5. Scope of the Investigation
6. Injury Test
7. Respondent Selection
8. Application of the Countervailing Duty Law to Imports from the PRC
9. Use of Facts Otherwise Available and Adverse Inferences
10. ITC Notification
11. Disclosure and Public Comment
12. Conclusion

[FR Doc. 2014–06588 Filed 3–24–14; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–873]

Non-Oriented Electrical Steel From the Republic of Korea: Preliminary Negative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) preliminarily determines that *de minimis* countervailable subsidies are being provided to producers/exporters of non-oriented electrical steel (NOES) from the Republic of Korea (Korea). The period of investigation is January 1, 2012, through December 31, 2012. Interested parties are invited to comment on this preliminary determination.

DATES: *Effective Date:* March 25, 2014.

FOR FURTHER INFORMATION CONTACT: Joshua Morris or Thomas Schauer, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1779 and (202) 482–0410, respectively.

SUPPLEMENTARY INFORMATION:

Alignment of Final Countervailing Duty (CVD) Determination With Final Antidumping Duty (AD) Determination

On the same day the Department initiated this CVD investigation, the Department also initiated AD investigations of NOES from Korea and several other countries.[1] The CVD investigation and the AD investigations cover the same merchandise. On March 11, 2014, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), alignment of the final CVD determination with the final AD determination of NOES from Korea was requested by AK Steel Corporation (Petitioner). Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we are aligning the final CVD determination with the final AD determination. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than July 29, 2014, unless postponed.

Scope of the Investigation

The merchandise subject to this investigation 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. For a complete description of the scope of the investigation, *see* Appendix 1 to this notice.

Methodology

The Department is conducting this CVD investigation in accordance with section 701 of the Act. For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.[2] 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 (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov,* and is 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 the electronic versions of the Preliminary Decision Memorandum are identical in content.

Critical Circumstances

On February 25, 2014, Petitioner alleged that critical circumstances exist with respect to imports of NOES from Korea. In accordance with 19 CFR 351.206(c)(2)(i), because Petitioner submitted a critical circumstances allegation more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary critical circumstances determination not later than the date of the preliminary determination.[3]

We preliminarily determine that critical circumstances do not exist with respect to POSCO, Daewoo International Corporation (DWI), and all other producers/exporters. For a full discussion of our preliminary critical circumstances determination, *see* the ''Critical Circumstances'' section of the Preliminary Decision Memorandum.

Preliminary Determination and Suspension of Liquidation

For the reasons explained in the Preliminary Decision Memorandum,[4] DWI and POSCO have been found preliminarily to be cross-owned under the Department's regulations, and are therefore being investigated as one entity which has received a combined subsidy rate. Thus, in accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an estimated countervailable subsidy rate for POSCO/DWI. Further, because POSCO/DWI is the only entity for which a rate has been calculated, we are also assigning that rate to all other producers and exporters of NOES from Korea.[5]

We preliminarily determine the countervailable subsidy rates to be:

[1] *See Non-Oriented Electrical Steel From the People's Republic of China, Germany, Japan, the Republic of Korea, Sweden, and Taiwan: Initiation of Antidumping Duty Investigations,* 78 FR 69041 (November 18, 2013).

[2] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, regarding ''Decision Memorandum for the Preliminary Determination in the Countervailing Duty Investigation of Non-Oriented Electrical Steel from the Republic of Korea'' dated concurrently with this notice (Preliminary Decision Memorandum).

[3] *See, e.g., Change in Policy Regarding Timing of Issuance of Critical Circumstances Determinations,* 63 FR 55364 (October 15, 1998).

[4] *See* ''Subsidies Valuation—Attribution of Subsidies.''

[5] *See* Section 703(d)(1)(A) of the Act.

Company	Subsidy rate
POSCO; Daewoo International Corporation	*0.59
All Others	*0.59

Percent (*de minimis*).

Because we have preliminarily determined that the CVD rates in this investigation are *de minimis,* we will not direct U.S. Customs and Border Protection to suspend liquidation of entries of subject merchandise.

Disclosure and Public Comment

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of announcement of its public announcement.[6] Interested parties may submit case and rebuttal briefs, as well as request a hearing.[7] For a schedule of the deadlines for filing case briefs, rebuttal briefs, and hearing requests, *see* the Preliminary Decision Memorandum.

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act.

Dated: March 18, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix 1

Scope of the Investigation

The merchandise subject to this investigation 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'' in the prior sentence 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 Oesteds) along (*i.e.,* parallel to) the rolling direction of the sheet (*i.e.,* B800 value). NOES contains by weight at least 1.25 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 is subject to this investigation whether it is fully processed (fully annealed to develop final magnetic properties) or semi-processed (finished to final thickness and physical form but not fully annealed to develop final magnetic properties); whether or not it is coated (*e.g.,* with enamel, varnish, natural oxide surface, chemically treated or phosphate surface, or other non-metallic materials). 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 this investigation is not limited to merchandise meeting the specifications noted above.

NOES is sometimes referred to as cold-rolled non-oriented electrical steel (CRNO), non-grain oriented (NGO), non-oriented (NO), or cold-rolled non-grain oriented (CRNGO). These terms are interchangeable.

The subject merchandise is provided for in subheadings 7225.19.0000, 7226.19.1000, and 7226.19.9000 of the Harmonized Tariff Schedule of the United States (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.

Appendix 2

List of Topics Discussed in the Preliminary Decision Memorandum

1. Summary
2. Background
3. Critical Circumstances
4. Scope Comments
5. Scope of the Investigation
6. Injury Test
7. Subsidies Valuation
8. Analysis of Programs
9. ITC Notification
10. Disclosure and Public Comment
11. Verification
12. Conclusion

[FR Doc. 2014–06565 Filed 3–24–14; 8:45 am]

BILLING CODE 3510–DS–P

[6] *See* 19 CFR 351.224(b).

[7] *See* 19 CFR 351.309(c)–(d), 19 CFR 351.310(c).

DEPARTMENT OF COMMERCE

International Trade Administration

International Framework for Nuclear Energy Cooperation (IFNEC) Industry Workshop on Developing Options and Pathways for Disposal of Spent Nuclear Fuel and High-Level Waste

AGENCY: ITA, DOC.

ACTION: Notice.

Event Description

The U.S. Department of Commerce's International Trade Administration (ITA) is coordinating with the U.S. Department of Energy to organize participation by U.S. companies in the International Framework for Nuclear Energy Cooperation (IFNEC) Industry Workshop on Developing Options and Pathways for Disposal of Spent Nuclear Fuel and High-Level Waste, to be held May 5–6, 2014 in Bucharest, Romania. IFNEC is an international forum consisting of 63 countries and three international organizations, and is sponsoring this workshop to facilitate a more focused dialogue directed at understanding the challenges of spent fuel management facing countries that are beginning to develop nuclear power. ITA is seeking the participation of up to 10 U.S. companies or trade associations in the civil nuclear sector in the IFNEC Workshop. U.S. companies will have the opportunity to participate in interactive panel discussions and meet with senior foreign government and industry officials to discuss commercial options for the long-term management and disposal of spent fuel.

Event Setting

The IFNEC Workshop will bring together IFNEC policy makers, nuclear industry representatives, energy planning agencies and international organizations to consider current options for countries' management of the back end of the nuclear fuel cycle and potential options for commercially-based regional or multinational spent fuel disposal services.

IFNEC Background

IFNEC is led by an Executive Committee, which is made up of ministerial-level officials or their designees from Participant Countries that meet annually to set the IFNEC agenda for the coming year. Observer Countries and International Organizations are welcome and encouraged to attend the ministerial. IFNEC has two working groups, the Reliable Nuclear Fuels Working Group (RNFWG) and the Infrastructure Development Working Group (IDWG), that focus on modes for reliable fuel supply and infrastructure development respectively. In 2012, the RNFWG was directed by the Executive Committee to hold a workshop on commercially-based approaches to used fuel management.

Event Scenario

Workshop format

The IFNEC Workshop will provide a setting in which representatives of governments and the global nuclear industry will address issues involving potential commercial options for the long-term management and disposal of spent fuel through presentations and interactive panel discussions.

The Workshop goals are to:

- *Clarify industry interest in the development of final waste options and discuss what is needed to incentivize industry involvement;*
- *Discuss the need for final waste management capabilities and the role of*

social contract issues in the development of disposal options;

• *Explore what factors are needed to develop disposal options;*

Event Dates and Draft Agenda*

Monday, May 5

9:00–9:15 a.m. Opening Remarks

9:15–12:00 p.m. Session 1: Waste Management Capabilities and the Role of Social Contract Issues. *This session will provide newcomer countries' perspectives on key disposal issues, disposal options, waste management capabilities for disposal, and lessons learned regarding public interactions, siting facilities, and political and social issues associated with interim and final disposal.*

12:00–1:30 p.m. Lunch

1:30–3:00 p.m. Moderated and interactive Panel Discussion on Session 1

3:00–3:30 p.m. Break

3:30–5:00 p.m. Session 2: Prerequisites for the Development of a Commercial Disposal Services Market. *This session will seek to define the necessary frameworks required for a commercial disposal service market in the following areas: waste management, waste inventory, interim storage, public acceptance, laws and standards, stabilities and reversibility, respective responsibilities, multi-generation stakes, and unlimited liability.*

Tuesday, May 6

9:00–9:30 a.m. Session 3: RNFSWG Activities Addressing Disposal Options. *The RNFSWG will provide an update on what has been done to date to address the need for disposal options and identify the issues associated with their potential development. Items to be discussed include: CFS Discussion Paper, Current Practices Paper, work on examples of international agreements needed, identification of issues that will need to be addressed, alternative approaches to disposal options.*

9:30–12:00 p.m. Session 4: Industry Interest in the Development of Final Waste Options. *This session will give industry the opportunity to provide their feedback and reactions to the RNFSWG's concept of a Commercial Disposal Services Market. U.S. industry participants will have the means to actively participate and influence the direction in which the RNFSWG proceeds.*

12:00–1:30 p.m. Lunch

1:30–3:00 p.m. Wrap-up Discussion. *This discussion is designed for additional reactions to the previous sessions and the identification of possible future activities for the RNFSWG to consider in supporting the development of final waste management capabilities and options .*

* Following the Conclusion of the Workshop the RNFSWG Meeting will convene.

3:30–5:00 p.m. RNFSWG Meeting of Members—Separate Agenda

Event Goals

U.S. civil nuclear industry representatives have in the past found IFNEC meetings and workshops to be ideal opportunities to network with senior U.S. and foreign government representatives interested in the potential of nuclear power. Workshop participants will benefit from the expertise that the U.S. civil nuclear industry has amassed in this sector and may potentially learn how to better partner with U.S. industry on future nuclear power projects, thus facilitating increased U.S. exports.

Organizers and participants will engage in a dialogue on ways to develop national capabilities for long-term waste management and the benefits of potentially developing viable regional or international disposal options, particularly for countries with small reactor fleets. This workshop will also enable participants to share experiences regarding existing national disposal programs and to discuss specific aspects related to international waste disposal cooperation. In addition, the workshop will seek to identify the role of industry and government in developing such options and prerequisites for the development of a market for such services.

Participation Requirements

Organizations interested in participating in the Workshop must complete and submit an application package for consideration by the ITA. Applicants will be evaluated based on their ability to meet the selection criteria outlined below. Up to 10 organizations will be selected to participate in the IFNEC Workshop from the applicant pool of U.S. companies and trade associations. Only companies or trade associations representing companies that are already doing business internationally may apply. Applications will be reviewed on a rolling basis in the order that they are received.

Fees and Expenses

After an organization has been selected to participate, the IFNEC Steering Group Chair will send out a formal invitation. There is NO participation fee associated with participating in the IFNEC Workshop; however, participants will be responsible for personal expenses associated with lodging, most meals, incidentals, local ground transportation, air transportation from the United States to the event location, and return to the United States.

Conditions for Participation

Applicants must submit to ITA's staff (see Contact) a completed mission application signed by a company official, together with supplemental application materials addressing how their organization satisfies the selection criteria listed below by March 28, 2014. If the ITA receives an incomplete application, it may be rejected or ITA may request additional information.

In question 11 of the trade event application, each applicant is asked to certify that the products and services it intends to export through the event are either manufactured or produced in the United States, or, if not, are marketed under the name of a U.S. firm and have U.S. content representing at least 51 percent of the value of the finished good or service. For purposes of this event, meeting the 51 percent content requirement is not a prerequisite for mission participation and applicant responses to question 11 will serve as supplemental information the ITA is reviewing applications.

In the case of a trade association, the applicant must certify that as part of its event participation, it will represent the interests of its members.

Selection Criteria for Participation

Selection will be based on the following criteria:

• The applicant's experience producing technology or providing services to civil nuclear energy projects or, in the case of a trade association, the experience of its members;

• The global breadth of the applicant's experience with civil nuclear energy projects;

• The extent and depth of the applicant's activities in the global civil nuclear energy industry;

• The applicant's company or, in the case of a trade association, the association's members' potential for, or interest in, doing business with IFNEC member countries;

• The applicant's ability to identify and discuss policy issues relevant to

U.S. competitiveness in the nuclear energy sector, with special emphasis on financing; and

• Consistency of the applicant's company or trade association's goals and objectives with the stated scope of the IFNEC Workshop.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Selected applicants will be asked to sign a Participation Agreement with the Department of Commerce which includes the following mandatory certifications (applicants that cannot attest to these certifications cannot participate):

• Certify that the products and services that it intends to highlight as examples at the workshop would be in compliance with U.S. export controls and regulations;

• Certify that it has identified to the Department of Commerce for its evaluation any business pending before the Department that may present the appearance of a conflict of interest;

• Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and

• Certify that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

Timeframe for Recruitment and Participation

Recruitment for participating in the IFNEC Industry Workshop on Developing Options and Pathways for Disposal of Spent Nuclear Fuel and High-Level Waste as a representative of the U.S. nuclear industry will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar, notices to industry trade associations and other multiplier groups. Recruitment will begin immediately and conclude no later than March 28, 2014. The ITA will review applications and make selection decisions on a rolling basis beginning March 28, 2014. Applications received after March 28, 2014 will be considered only if space and scheduling permit.

Contact

Jonathan Chesebro, Senior Nuclear Trade Specialist, Industry & Analysis—Office of Energy and Environmental Industries, U.S. Department of Commerce, International Trade Administration, Phone: (202) 482–1297, Email: *jonathan.chesebro@trade.gov.*

Dated: March 18, 2014.

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2014–06509 Filed 3–24–14; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

International Framework for Nuclear Energy Cooperation (IFNEC) Small Modular Reactor Workshop

AGENCY: International Trade Administration, DOC.

ACTION: Notice.

Event Description

The U.S. Department of Commerce's International Trade Administration (ITA) is coordinating with the U.S. Department of Energy—the lead U.S. agency for the International Framework for Nuclear Energy Cooperation (IFNEC)—to organize the participation of U.S. civil nuclear organizations in an IFNEC Small Modular Reactor (SMR) Workshop, to be held on June 11–12, 2014 near the Dead Sea in Jordan. IFNEC is an international forum consisting of 63 countries ranging from those with emerging and existing nuclear power programs to those in the process of phasing out nuclear power programs. The goal of this SMR Workshop is to gain a better understanding, from a national energy planning authority and Nuclear Energy Program Implementation Organization (NEPIO) perspective, of the near-term SMR commercial deployment process; and how SMRs could be deployed in markets represented by IFNEC members, including countries seeking to use nuclear energy for the first time and those with limited infrastructure and resources, such as countries with small electricity grids and insufficient capital to finance the deployment of medium and large-sized reactors. ITA is seeking the participation of approximately 15 U.S. companies or trade associations in the civil nuclear sector. The Workshop's scenario-based and interactive dialogue will provide an opportunity for member country policymakers and other participants to benefit from the viewpoints of the U.S. civil nuclear industry and for U.S. industry to learn more about the policies, regulatory landscape, and energy plans of participating IFNEC countries.

Event Setting

The Workshop will bring together IFNEC member country representatives and key stakeholders involved in the development and deployment of SMRs. The Workshop will take an enterprise-wide approach by convening a broad spectrum of stakeholders who would play key roles in successfully deploying an SMR (e.g. vendors, utilities, commercial banks, export credit agencies, insurers, nuclear safety and security regulators, market regulators, insurers, rating agencies, transportation, energy planning authorities/NEPIOs) in order to identify SMR deployment options and approaches. An important Workshop goal will be to understand the critical factors for key stakeholder groups—what they can and cannot do—in order to discuss specific deployment options.

IFNEC Background

IFNEC is led by an Executive Committee, composed of ministerial-level officials or their designees from Participant Countries and three International Organizations (the International Atomic Energy Agency (IAEA), Generation IV International Forum (GIF) and Euratom) that meet annually to set the agenda for the coming year. Observer Countries and International Organizations are welcome and encouraged to attend. This workshop was proposed and approved at the October 2013 meeting of the IFNEC Executive Committee in Abu Dhabi, UAE.

Event Scenario

The IFNEC SMR Workshop will provide a dynamic forum in which experts representing a broad spectrum of key stakeholders will engage in moderated hypothetical scenario-based exercises to address the benefits and challenges related to the deployment of SMRs. This Workshop's focus will be on reactors with a nominal output of 300 MWe (or less) based on a modular fabrication processes and ready for commercialization within the next 15 years. Following the scenario exercises, key experts will lead focused participatory dialogues among groups of Workshop attendees to further address specific issues and responses to the scenario-based exercises.

The interactions in the breakout groups will help Workshop attendees gain a better understanding of how the

stakeholders affect the process of SMR deployment. The primary goal of the workshop is to identify practical actions that IFNEC countries, individually or collectively, can take to address SMR deployment challenges.

Event Dates and Proposed Agenda

Wednesday, June 11

8:00–9:00 Registration and Networking
9:00–9:30 Welcome and Opening Remarks
9:30–10:00 Group Photo and Break
10:00–10:15 Workshop Objectives and Scene-Setter
10:15–11:00 Global Nuclear Reactor Market State of Play
11:00–12:00 National Market Perspectives Regarding SMRs
12:00–1:30 Lunch
1:30–3:30 Moderated Interactive Scenario Session #1: Build a Plan for Deployment of an SMR Based on Limited Capital, Credit and Infrastructure
3:30–4:00 Break
4:00–5:00 Breakout sessions to identify critical deployment issues and how the scenario country can or should address them
5:00–5:30 Breakout Reports led by Moderator
5:30–5:45 Wrap-up of Day 1/Preview of Day 2 by Steering Group Chair and Moderator
6:15–8:45 Dinner/Networking Opportunity

Thursday, June 12

8:30–10:00 Small Modular Reactor Descriptions—Facilitated by Workshop Moderator
10:00–10:30 Break
10:30–12:00 Moderated Interactive Scenario Session #2: Build a Plan for Deployment of an SMR Based on Substantial Capital, Credit, and Infrastructure
12:00–1:30 Lunch
1:30–3:00 Breakout sessions to identify the critical deployment issues in Scenario #2 and how the scenario country can or should address them
3:00–3:30 Break
3:30–4:30 Plenary Session and Summary of Findings/Recommendations and Conclusions
4:30–5:00 Wrap-Up by Steering Group Chair and Moderator
7:30–9:00 Gala Diner

*** The lunch and Gala Dinner will be provided by the host country***

Event Goals

The purpose of U.S. civil nuclear industry participation in the IFNEC SMR Workshop is to provide an opportunity for participants to hear U.S. industry views in this sector and for industry representatives to showcase their knowledge and experience with SMR deployment to the IFNEC Member Countries. U.S. participants will also have the opportunity to network, build relationships in the global civil nuclear sector; interact with senior U.S. and foreign government and industry officials and learn more about current and future project opportunities. Workshop participants will benefit from the expertise that the U.S. industry has amassed in this sector and may learn how to better partner with U.S. industry on future nuclear power projects, thus potentially leading to increased U.S. exports.

Participation Requirements

Organizations interested in participating in the IFNEC SMR Workshop must complete and submit an application package for consideration by the ITA. Applicants will be evaluated based on their ability to meet certain the selection criteria outlined below. A minimum of 15 organizations will be selected from the applicant pool of U.S. companies and trade associations. Only companies or trade associations representing companies that are already doing business internationally may apply. Applications will be reviewed on a rolling basis in the order that they are received.

Fees and Expenses

After a company or trade association has been selected to participate in the IFNEC Workshop, the IFNEC Steering Group Chair will send out a formal invitation. There is NO participation fee associated with participating in the IFNEC Workshop; however, participants will be responsible for personal expenses associated with lodging, most meals, incidentals, local ground transportation, air transportation from the United States to the event location, and return to the United States. The host country will provide coffee both days and host the gala dinner on the second night of the event.

Sponsorship Opportunities

There are a limited number of sponsorship opportunities available for interested companies to showcase their company profile during the Workshop. For more information about these opportunities, please contact Jonathan Chesebro at jonathan.chesebro@trade.gov or 202–482.1297.

Conditions for Participation

Applicants must submit to ITA's staff (see Contact) a completed mission application signed by a company official, together with supplemental application materials addressing how their organization satisfies the selection criteria listed below by April 4, 2014. If the ITA receives an incomplete application, it may be rejected or ITA may request additional information.

In question 11 of the trade event application, each applicant is asked to certify that the products and services it intends to export through the event are either manufactured or produced in the United States, or, if not, are marketed under the name of a U.S. firm and have U.S. content representing at least fifty-one percent of the value of the finished good or service. For purposes of this event, meeting the 51 percent content requirement is not a prerequisite for mission participation and applicant responses to question 11 will serve as supplemental information the ITA is reviewing applications. In the case of a trade association, the applicant must certify that as part of its even participation, it will represent the interests of its members.

Selection Criteria for Participation

Selection will be based on the following criteria:

- The applicant's experience producing technology or providing services to civil nuclear energy projects or, in the case of a trade association, the experience of its members;
- The global breadth of the applicant's experience with civil nuclear energy projects;
- The extent and depth of the applicant's activities in the global civil nuclear energy industry;
- The applicant's company or, in the case of a trade association, the association's members' potential for, or interest in, doing business with IFNEC member countries;
- The applicant's ability to identify and discuss policy issues relevant to U.S. competitiveness in the nuclear energy sector, with special emphasis on financing; and
- Consistency of the applicant's company or trade association's goals and objectives with the stated scope of the IFNEC Workshop.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Selected applicants will be asked to sign a Participation Agreement with the Department of Commerce which includes the following mandatory certifications (applicants that cannot

attest to these certifications cannot participate):

• Certify that the products and services that it intends to highlight as examples at the workshop would be in compliance with U.S. export controls and regulations;

• Certify that it has identified to the Department of Commerce for its evaluation any business pending before the Department that may present the appearance of a conflict of interest;

• Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and

• Certify that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

Timeframe for Recruitment and Participation

Recruitment for participation in the IFNEC Workshop as a representative of the U.S. nuclear industry will be conducted in an open and public manner, including publication in the **Federal Register,** posting on the Commerce Department trade mission calendar, notices to industry trade associations and other multiplier groups. Recruitment will begin immediately and conclude no later than April 4, 2014. The ITA will review applications and make selection decisions on a rolling basis beginning on or about April 4, 2014. Applications received after April 4, 2014, will be considered only if space and scheduling permit.

Contact

Jonathan Chesebro, Senior International Trade Specialist, Industry and Analysis, Office of Energy and Environmental Industries, International Trade Administration, Phone: (202)-482–1297, Email: *jonathan.chesebro@trade.gov.*

Dated: March 18, 2014.

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2014–06506 Filed 3–24–14; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Gathering Observational Data on Historical and Current Biological Trends among Populations of Alewife (Alosa pseudoharengus) and Blueback Herring (A. aestivalis)

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 27, 2014.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Dan Kircheis, (207) 866–7320 or *Dan.Kircheis@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this information collection is to gather historical and current population and biological information from commercial and recreational harvesters of the two species of river herring; alewife (*Alosa pseudoharengus*) and blueback (*A. aestivalis*). Given that commercial and recreational fishermen have a unique and important understanding of the long term status of the species for which they are fishing, NOAA intends to contact both current and retired recreational and commercial harvesters of river herring from Maine to North Carolina, to inquire about recent and long-term observations of changes in run-timing, abundance, distribution, individual size and species composition. Results will be used to assist NOAA in identifying observational trends among river herring populations throughout their range so as to make more informed decisions with respect to their management.

II. Method of Collection

Respondents will be contacted by phone to schedule an interview. Interviews will be held either face to face with the respondent or by phone.

III. Data

OMB Control Number: None.

Form Number: N/A

Type of Review: Regular submission (request for a new information collection).

Affected Public: Business or other for-profit organizations; individuals or households.

Estimated Number of Respondents: 400.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden Hours: 400.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 19, 2014.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–06431 Filed 3–24–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD138

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States, Dolphin and Wahoo Fishery Off the Atlantic States, and Coral and Coral Reefs Fishery in the South Atlantic; Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of an application for an exempted fishing permit; request for comments.

SUMMARY: NMFS announces the receipt of an application for an exempted fishing permit (EFP) from Michael Fatzinger, on behalf of the North Carolina Aquariums at Roanoke Island, Pine Knoll Shores, Fort Fisher, and Jennette's Pier, NC. If granted, the EFP would authorize North Carolina Aquariums to collect, with certain conditions, various species of reef fish, dolphin, and live rock in Federal waters, along the North Carolina coast. The specimens would be used in educational exhibits displaying North Carolina native species at the aquariums.

DATES: Written comments must be received on or before April 24, 2014.

ADDRESSES: You may submit comments, identified by ''NOAA–NMFS–2014–0022'', by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA–NMFS–2014–0022,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Mary Vara, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Mary Vara, 727–824–5305; email *Mary.Vara@noaa.gov.*

SUPPLEMENTARY INFORMATION: The EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and regulations at 50 CFR 600.745(b) concerning exempted fishing.

This action involves activities covered by regulations implementing the Fishery Management Plans (FMP) for the Snapper-Grouper Fishery of the South Atlantic Region, the Dolphin and Wahoo Fishery of the Atlantic Region, and the FMP for Coral, Coral Reefs and Live/Hardbottom Habitat of the South Atlantic Region. The applicant requests authorization to collect a variety of species in the snapper-grouper complex, dolphin, and live rock. Specific species and quantities of each species, listed by common name, to be collected each year of a 5-year period include a maximum of 16 red hind, 16 rock hind, 16 graysby, 24 red porgy, 24 black sea bass, 16 coney, 16 scamp, 24 dolphin, 3 snowy grouper, 16 red grouper, 16 gag grouper, 9 yellowedge grouper, 9 yellowfin grouper, 16 yellowmouth grouper, 36 vermilion snapper, 20 red snapper, 36 yellowtail snapper, 24 amberjack (lesser and greater), 24 almaco jack, 100 bar jack, and 50 lb (22.7 kg) of live rock.

The applicant requested authorization to collect a limited number of goliath grouper; however, if issued, this EFP would not authorize the collection of goliath grouper. Specimens would be collected in Federal waters from 3 miles (4.8 km) offshore out to 100 fathoms (182 m), from 33°10′ N lat. to 36°30′ N lat. along the coast of North Carolina. The EFP would authorize sampling operations to be conducted on vessels to be named by the North Carolina Aquarium and designated in the EFP. The project proposes to use hook-and-line gear, no more than 5 black sea bass pots and 10 minnow traps to collect fish, and SCUBA to collect live rock by hand. Most collections would be conducted year-round for a period of 5 years, commencing on the date of issuance of the EFP. Black sea bass pots and minnow traps would be deployed from the months of May through October each year of the EFP.

The intent of the request is to incorporate North Carolina native species into the educational exhibits at four aquariums located on Pine Knoll Shores, Roanoke Island, Fort Fisher, and Jennette's Pier, NC. The aquariums use these displays of native North Carolina habitats and species to teach the public about conservation of these resources.

NMFS finds this application warrants further consideration. Based on a preliminary review, NMFS intends to issue an EFP. Possible conditions the agency may impose on this permit, if it is indeed granted, include but are not limited to, a prohibition of conducting research within marine protected areas, marine sanctuaries, special management zones, or artificial reefs without additional authorization. Additionally, NMFS will require any sea turtles taken incidentally during the course of fishing or scientific research activities to be handled with due care to prevent injury to live specimens, observed for activity, and returned to the water. To acquire live rock for the aquariums, the applicant has the option to either purchase aquacultured live rock from a commercial source, or if the EFP is issued, they may collect up to 50 lb (22.7 kg) of live rock from the Federal waters off North Carolina, but immediately replace it with an equal weight of substrate suitable to support the culture of live rock. A final decision on issuance of the EFP will depend on NMFS' review of public comments received on the application, consultations with the affected state, the South Atlantic Fishery Management Council, and the U.S. Coast Guard, and a determination that it is consistent with all applicable laws.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 20, 2014.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–06527 Filed 3–24–14; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD163

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Construction of the Block Island Wind Farm

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from Deepwater Wind Block Island, LLC (DWBI) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to development of the Block Island Wind Farm. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to DWBI to incidentally take, by Level B harassment only, marine mammals during the specified activity.

DATES: Comments and information must be received no later than April 24, 2014.

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Supervisor, Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *itp.magliocca@noaa.gov.* Comments sent via email, including all attachments, must not exceed a 25-megabyte file size. NMFS is not responsible for comments sent to addresses other than those provided here.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

An electronic copy of the application may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

NMFS is also preparing an Environmental Assessment (EA) in accordance with the National Environmental Policy Act (NEPA) and will consider comments submitted in response to this notice as part of that process. The EA will be posted at the Web site listed above once it is finalized.

FOR FURTHER INFORMATION CONTACT: Michelle Magliocca, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On March 11, 2013, NMFS received an application from DWBI for the taking of marine mammals incidental to construction of the Block Island Wind Farm. The application went through a series of revisions and the final version was submitted on October 17, 2013. NMFS determined that the application was adequate and complete on December 2, 2013.

DWBI proposes to develop the Block Island Wind Farm (BIWF), a 30 megawatt offshore wind farm. The proposed activity could begin in late 2014 and last through late 2015; however, portions of the project would only occur for short, sporadic periods of times over the 1-year period. The following specific aspects of the proposed activities are likely to result in the take of marine mammals: Impact pile driving and the use of dynamically positioned (DP) vessel thrusters. Take, by Level B Harassment only, of individuals of nine species is anticipated to result from the specified activity.

Description of the Specified Activity

Overview

The BIWF will consist of five, 6 megawatt wind turbine generators (WTGs), a submarine cable interconnecting the WTGs, and a transmission cable. Construction of the BIWF will involve the following activities: Cable landfall construction on Block Island via a short-distance horizontal directional drill (HDD) from an excavated trench box located on Crescent Beach, Block Island; jacket foundation installation; inter-array and export cable installation; and WTG installation. Installation of the jacket foundation would require impact pile driving. The generation of underwater noise from impact pile driving and the DP vessel thruster may result in the incidental take of marine mammals.

In connection with the BIWF, Deepwater Wind Block Island Transmission System, LLC (a different applicant) proposes to construct the Block Island Transmission System, a bi-directional submarine transmission cable that will run from Block Island to the Rhode Island mainland. Incidental take of marine mammals resulting from construction of the Block Island Transmission System will be assessed separately.

Dates and Duration

Construction activities could begin in late 2014 and are scheduled to be complete by December 2015. The anticipated project work windows are provided in Table 1.

TABLE 1—ANTICIPATED PROJECT WORK WINDOWS

Activity	Anticipated work window
Contracting, mobilization, and verification	January 2014–December 2014.
Onshore short-distance HDD installation	December 2014–June 2015.
Onshore/offshore long-distance HDD installation	January 2015–June 2015.
Onshore cable installation	October 2014–May 2015.
Offshore cable installation	April 2015–August 2015.
Landfall demobilization and remediation	May 2015–June 2015.
Foundation fabrication and transportation	October 2015–September 2015.
WTG jacket foundation—non-pile driving activity	April–July or August–October.
WTG jacket foundation—pile driving	May–July or August–October.
WTG installation and commissioning	July–December.

NMFS is proposing to issue an authorization effective December 2014 through November 2015, based on the anticipated work windows for in-water construction that could result in the incidental take of marine mammals. While project activities may occur for 1 year, in-water pile driving is only expected to occur for up to 20 days (4 days for each WTG). Use of the DP vessel thruster during cable installation activities is expected to occur for 28 days maximum. Impact pile driving would occur during daylight hours only, starting approximately 30 minutes after dawn and ending 30 minutes prior to dusk, unless a situation arises where stopping pile driving would compromise safety (either human health or environmental) and/or the integrity of the project. Cable installation (and subsequent use of the DP vessel thruster) would be conducted 24 hours per day.

Specified Geographic Region

The offshore components of the BIWF will be located in state territorial waters. Construction staging and laydown for offshore construction is planned to occur at the Quonset Point port facility in North Kingstown, Rhode Island. The WTGs will be located on average of about 4.8 kilometers (km) southeast of Block Island, and about 25.7 km south of the Rhode Island mainland. The WTGs will be arranged in a radial configuration spaced about 0.8 km apart. The inter-array cable will connect the five WTGs for a total length of 3.2 km from the northernmost WTG to the southernmost WTG (Figure 1.2–1 of DWBI's application). Water depths along the WTG array and inter-array cable range up to 23.3 meters (m).

The submarine portions of the export cable will be installed by a jet plow supported by a DP vessel. The export cable will originate at the northernmost WTG and travel 10 km to a manhole on Block Island. Water depths along the export cable submarine route range up to 36.9 m. Terrestrial cables, an interconnection switchyard, and other ancillary facilities associated with the BIWF will be located in the town of New Shoreham in Washington County, Rhode Island.

Detailed Description of Activities

The following sections provide additional details associated with each portion of the BIWF construction.

1. Landfall Construction

On Block Island, DWBI plans to bring the export cable ashore via a short-distance HDD. DWBI would use the short-distance HDD to install either a steel or high density polyethylene conduit for the cable under the beach. The excavated trench on Crescent Beach would be approximately 2 to 3 m wide, 4 m deep, and 11 m long. Spoils from the trench excavation would be stored on the respective beach and returned to the trench after cable installation. The HDD would enter through the shore side of the excavated trench and the cable conduit would be installed between the trench and the manhole. The export cable would then be pulled from the excavated trench into the respective manhole through the newly installed conduit. Sheet piling installations would occur at low tide.

The coupling of land-based vibrations and nearshore sounds into the underwater acoustic field is not well understood and cannot be accurately predicted using current models. However, because the excavation for the cable trench and the HDD installation on the beach would occur onshore and because sand is generally a very poor conductor of vibrations, NMFS considers it unlikely that the underwater noise generated from either of these installations would result in harassment of marine mammals.

A jet plow, supported by a DP cable installation barge, would be used to install the export cable below the seabed. The jet plow would be positioned over the trench at the mean low water mark on Crescent Beach and be pulled from shore by the cable installation barge.

2. Jacket Foundation Installation

Offshore installation of the WTG jacket foundations would be carried out from a derrick barge moored to the seabed. Each jacket foundation would be lifted from the derrick barge, placed onto the seafloor, leveled, and made ready for piling. The piles would then be inserted above sea level into each corner of the jacket foundation in two segments. First, the lead sections of the piles would be inserted into the jacket foundation legs and then driven into the seafloor. Then, the second length of the piles would be placed on the lead pile section and welded into place. The jacket foundation piles would then be driven into the seafloor to the final penetration design depth or until refusal, whichever comes first. DWBI anticipates a final pile depth of up to 76.2 m. For the purpose of analysis, DWBI assumes that impact pile driving would start with a 200 kilojoule (kJ) rated hydraulic hammer, followed by a 600 kJ rated hammer to reach final design penetration. A 1,000-kilowatt unit would power the hammers. Changing out the hammers from 200 to 600 kJ would be required once the driving forces become ineffective, and would take about 30 to 60 minutes to complete, during which time impact pile driving would cease. Once pile driving is complete, the top of the piles would be welded to the jacket foundation legs using shear plates and cut to allow for horizontal placement of the WTG transition deck. Finally, the boat landing and transition decks would be welded into place.

Pile driving activities would occur during daylight hours only, unless a situation arises where stopping pile driving would compromise safety (either human health or environmental) and/or the integrity of the project. Installation of each jacket foundation would require 7 days to complete; the duration of pile driving within this

timeframe is anticipated to be 4 days for each jacket foundation. The jacket foundations would be installed one at a time at each WTG location for a total of 5 weeks assuming no delays due to weather or other circumstances.

3. Offshore Cable Installation

DWBI would use a jet plow, supported by a DP cable installation barge, to install the export cable and inter-array cable below the seabed. The jet plow would be positioned over the trench and pulled from shore by the cable installation vessel. The jet plow would likely be a rubber-tired or skid-mounted plow with a maximum width of about 4.6 m, and pulled along the seafloor behind the cable-laying barge with assistance of a non-DP material barge. High-pressure water from vessel-mounted pumps would be injected into the sediments through nozzles situated along the plow, causing the sediments to temporarily fluidize and create a liquefied trench. DWBI anticipates a temporary trench width of up to 1.5 m. As the plow is pulled along the route behind the barge, the cable would be laid into the temporary, liquefied trench through the back of the plow. The trench would be backfilled by the water current and the natural settlement of the suspended material. Umbilical cords would connect the submerged jet plow to control equipment on the vessel to allow the operators to monitor and control the installation process and make adjustments to the speed and alignment as the installation proceeds across the water.

The export cable and inter-array cable would be buried to a target depth of 1.8 m beneath the seafloor. The actual burial depth depends on substrate encountered along the route and could vary from 1.2 to 2.4 m. If less than 1.2 m burial is achieved, DWBI may elect to install additional protection, such as concrete matting or rock piles. At each of the WTGs, the inter-array cable would be pulled into the jacket foundation through J-tubes installed on the sides of the jacket foundations. At the J-tubes, additional cable armoring such as sand bags and/or rocks would be used to protect the inter-array cable.

A DP vessel would be used during cable installation in order to maintain precise coordinates. DP systems maintain their precise coordinates in waters through the use of automatic controls. These control systems use variable levels of power to counter forces from current and wind. During cable-lay activities, DWBI expects that a reduced 50 percent power level will be used by DP vessels. DWBI modeled scenarios using a source level of 180 dB re 1 micro Pascal for the DP vessel thruster, assuming water depths of 7, 10, 20, and 40 m, and thruster power of 50 percent. Detailed information on the acoustic modeling for this source is provided in Appendix A of DWBI's application (see **ADDRESSES**).

Depending on bottom conditions, weather, and other factors, installation of the export cable and inter-array cable is expected to take 2 to 4 weeks. This schedule assumes a 24-hour work window with no delays due to weather or other circumstances.

4. WTG Installation

The WTGs would be installed upon completion of the jacket foundations and the pull-in of the inter-array cable. The WTGs would be transported by a transportation barge to the BIWF from a temporary storage facility on the mainland. The transportation barge would set up at the installation site adjacent to a jack-up material barge. The jack-up barge legs would be lowered to the seafloor to provide a level work surface and begin the WTG installation. The WTGs would be installed in sections with the lower tower section lifted onto the transition deck followed by the upper tower section.

Installation of each WTG would require 2 days to complete, assuming a 24-hour work window and no delays due to weather or other circumstances. None of the activities associated with installation of the WTGs is expected to result in the harassment of marine mammals.

Description of Marine Mammals in the Area of the Specified Activity

There are 34 marine mammal species with possible or confirmed occurrence in the proposed area of the specified activity (Table 2).

TABLE 2—MARINE MAMMAL SPECIES WITH POSSIBLE OR CONFIRMED OCCURRENCE IN THE PROPOSED PROJECT AREA

Common name	Scientific name	Status	Occurrence	Seasonality	Range	Abundance
Toothed whales (Odontocetes) Atlantic white-sided dolphin.	*Lagenorhynchus acutus*		Confirmed	Year-round	North Carolina to Canada	23,390
Atlantic spotted dolphin	*Stenella frontalis*					50,978
Bottlenose dolphin	*Tursiops truncatus*	Strategic (northern coastal stock).				9,604
Short-beaked common dolphin.	*Delphinus delphis*		Common	Year-round	North Carolina to Canada	120,743
Harbor porpoise	*Phocoena phocoena*	Strategic	Common	Year-round	North Carolina to Greenland.	89,054
Killer whale	*Orcinus orca*					(1)
False killer whale	*Pseudorca crassidens*					(1)
Long-finned pilot whale	*Globicephala malaena*					12,619
Short-finned pilot whale	*Globicephala macrohynchus.*					24,674
Risso's dolphin	*Grampus griseus*					20,479
Striped dolphin	*Stenella coeruleoalba*					94,462
White-beaked dolphin	*Lagenorhynchus albirostris*					2,003
Sperm whale	*Physeter macrocephalus*	Endangered				4,804
Pygmy sperm whale	*Kogia breviceps*	Strategic				395
Dwarf sperm whale	*Kogia sima*					395
Cuvier's beaked whale	*Ziphius cavirostris*	Strategic				3,513
Blainville's beaked whale	*Mesoplodon densirostris*					3,513
Gervais' beaked whale	*Mesoplodon europaeus*	Strategic				3,513
True's beaked whale	*Mesoplodon mirus*	Strategic				3,513
Bryde's whale	*Balaenoptera edeni*					
Northern bottlenose whale	*Hyperoodon ampullatus*					
Baleen whales (Mysticetes) Minke whale.	*Balaenoptera acutorostrata*		Common (spring and summer).	Spring, summer, fall.	Caribbean to Greenland	8,987
Blue whale	*Balaenoptera musculus*	Endangered				(1)
Fin whale	*Balaenoptera physalus*	Endangered	Common	Year-round	Caribbean to Greenland	3,985
Humpback whale	*Megaptera novaeangliae*	Endangered	Confirmed	Year-round	Caribbean to Greenland	11,570

TABLE 2—MARINE MAMMAL SPECIES WITH POSSIBLE OR CONFIRMED OCCURRENCE IN THE PROPOSED PROJECT AREA—Continued

Common name	Scientific name	Status	Occurrence	Seasonality	Range	Abundance
North Atlantic right whale	*Eubalaena glacialis*	Endangered	Confirmed	Year-round	Southeastern U.S. to Candada.	444
Sei whale	*Balaenoptera borealis*	Endangered				(1)
Pinnipeds Gray seals	*Halichoerus grypus*		Confirmed	Year-round	New England to Canada	348,900
Harbor seals	*Phoca vitulina*		Common	Spring, summer, winter.	Florida to Canada	99,340
Hooded seals	*Cystophora cristata*					(1)
Harp seal	*Phoca groenlandica*					(1)
West Indian manatee	*Trichechus manatus*	Endangered				3,802

[1] Unknown.

The highlighted species in Table 2 are pelagic and/or northern species, or are so rarely sighted that their presence in the proposed project area, and therefore take, is unlikely. These species are not considered further in this proposed IHA notice. The West Indian manatee is managed by the U.S. Fish and Wildlife Service and is also not considered further in this proposed IHA notice. Further information on the biology and local distribution of these species can be found in section 4 of DWBI's application (see **ADDRESSES**), and the NMFS Marine Mammal Stock Assessment Reports, which are available online at: *http://www.nmfs.noaa.gov/pr/species/.*

Potential Effects of the Specified Activity on Marine Mammals

This section includes a summary and discussion of the ways that the types of stressors associated with the specified activity (i.e., impact pile driving and use of the DP vessel thruster) have been observed to impact marine mammals. This discussion may also include reactions that we consider to rise to the level of a take and those that we do not consider to rise to the level of a take (for example, with acoustics, we may include a discussion of studies that showed animals not reacting at all to sound or exhibiting barely measurable avoidance). This section is intended as a background of potential effects and does not consider either the specific manner in which this activity will be carried out or the mitigation that will be implemented, and how either of those will shape the anticipated impacts from this specific activity. The ''Estimated Take by Incidental Harassment'' section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The ''Negligible Impact Analysis'' section will include the analysis of how this specific activity will impact marine mammals and will consider the content of this ''Potential Effects of the Specified Activity on Marine Mammals'' section, the ''Estimated Take by Incidental Harassment'' section, the ''Proposed Mitigation'' section, and the ''Anticipated Effects on Marine Mammal Habitat'' section to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals, and from that on the affected marine mammal populations or stocks.

Background on Sound

Sound is a physical phenomenon consisting of minute vibrations that travel through a medium, such as air or water, and is generally characterized by several variables. Frequency describes the sound's pitch and is measured in hertz (Hz) or kilohertz (kHz), while sound level describes the sound's intensity and is measured in decibels (dB). Sound level increases or decreases exponentially with each dB of change. The logarithmic nature of the scale means that each 10-dB increase is a 10-fold increase in acoustic power (and a 20-dB increase is then a 100-fold increase in power). A 10-fold increase in acoustic power does not mean that the sound is perceived as being 10 times louder, however. Sound levels are compared to a reference sound pressure (micro-Pascal) to identify the medium. For air and water, these reference pressures are ''re: 20 μPa'' and ''re: 1 μPa,'' respectively. Root mean square (RMS) is the quadratic mean sound pressure over the duration of an impulse. RMS is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick, 1975). RMS accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels (Hastings and Popper, 2005). This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units rather than by peak pressures.

Acoustic Impacts

Impact pile driving and use of the DP vessel thruster during the BIWF project may temporarily impact marine mammals in the area due to elevated in-water sound levels. Marine mammals are continually exposed to many sources of sound. Naturally occurring sounds such as lightning, rain, sub-sea earthquakes, and biological sounds (e.g., snapping shrimp, whale songs) are widespread throughout the world's oceans. Marine mammals produce sounds in various contexts and use sound for various biological functions including, but not limited to: (1) Social interactions; (2) foraging; (3) orientation; and (4) predator detection. Interference with producing or receiving these sounds may result in adverse impacts. Audible distance, or received levels of sound depend on the nature of the sound source, ambient noise conditions, and the sensitivity of the receptor to the sound (Richardson *et al.,* 1995). Type and significance of marine mammal reactions to sound are likely dependent on a variety of factors including, but not limited to, (1) the behavioral state of the animal (e.g., feeding, traveling, etc.); (2) frequency of the sound; (3) distance between the animal and the source; and (4) the level of the sound relative to ambient conditions (Southall *et al.,* 2007).

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms have been derived using auditory evoked potentials, anatomical modeling, and other data, Southall *et al.* (2007) designate ''functional hearing groups'' for marine mammals and estimate the lower and upper frequencies of functional hearing of the groups. The functional groups and the associated frequencies are indicated below (though animals are less sensitive to sounds at the outer edge of their functional range

and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low frequency cetaceans (13 species of mysticetes): functional hearing is estimated to occur between approximately 7 Hz and 22 kHz (however, a study by Au *et al.* (2006) of humpback whale songs indicate that the range may extend to at least 24 kHz);
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High frequency cetaceans (eight species of true porpoises, six species of river dolphins, Kogia, the franciscana, and four species of cephalorhynchids): functional hearing is estimated to occur between approximately 200 Hz and 180 kHz; and
- Pinnipeds in Water: functional hearing is estimated to occur between approximately 75 Hz and 75 kHz, with the greatest sensitivity between approximately 700 Hz and 20 kHz.

As mentioned previously in this document, nine marine mammal species (seven cetaceans and two pinnipeds) are likely to occur in the proposed project area. Of the seven cetacean species likely to occur in DWBI's proposed project area, four are classified as low-frequency cetaceans (i.e., minke whale, fin whale, humpback whale, and North Atlantic right whale), two are classified as mid-frequency cetaceans (i.e., Atlantic white-sided dolphin and short-beaked common dolphin), and one is classified as a high-frequency cetacean (i.e., harbor porpoise) (Southall *et al.,* 2007). A species' functional hearing group is a consideration when we analyze the effects of exposure to sound on marine mammals.

1. Hearing Impairment

Marine mammals may experience temporary or permanent hearing impairment when exposed to loud sounds. Hearing impairment is classified by temporary threshold shift (TTS) and permanent threshold shift (PTS). There are no empirical data for onset of PTS in any marine mammal; therefore, PTS-onset must be estimated from TTS-onset measurements and from the rate of TTS growth with increasing exposure levels above the level eliciting TTS-onset. PTS is presumed to be likely if the hearing threshold is reduced by ≥ 40 dB (that is, 40 dB of TTS). PTS is considered auditory injury (Southall *et al.,* 2007) and occurs in a specific frequency range and amount. Irreparable damage to the inner or outer cochlear hair cells may cause PTS; however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.,* 2007).

2. Temporary Threshold Shift (TTS)

TTS is the mildest form of hearing impairment that can occur during exposure to a loud sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises and a sound must be stronger in order to be heard. At least in terrestrial mammals, TTS can last from minutes or hours to (in cases of strong TTS) days, can be limited to a particular frequency range, and can occur to varying degrees (i.e., a loss of a certain number of dBs of sensitivity). For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the noise ends.

Marine mammal hearing plays a critical role in communication with conspecifics and in interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (i.e., recovery time), and frequency range of TTS and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animals is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts if it were in the same frequency band as the necessary vocalizations and of a severity that it impeded communication. The fact that animals exposed to levels and durations of sound that would be expected to result in this physiological response would also be expected to have behavioral responses of a comparatively more severe or sustained nature is also notable and potentially of more importance than the simple existence of a TTS.

Scientific literature highlights the inherent complexity of predicting TTS onset in marine mammals, as well as the importance of considering exposure duration when assessing potential impacts (Mooney *et al.,* 2009a, 2009b; Kastak *et al.,* 2007). Generally, with sound exposures of equal energy, quieter sounds (lower SPL) of longer duration were found to induce TTS onset more than louder sounds (higher SPL) of shorter duration (more similar to subbottom profilers). For intermittent sounds, less threshold shift will occur than from a continuous exposure with the same energy (some recovery will occur between intermittent exposures) (Kryter *et al.,* 1966; Ward, 1997). For sound exposures at or somewhat above the TTS-onset threshold, hearing sensitivity recovers rapidly after exposure to the sound ends. Southall *et al.* (2007) considers a 6 dB TTS (that is, baseline thresholds are elevated by 6 dB) to be a sufficient definition of TTS-onset. NMFS considers TTS as Level B harassment that is mediated by physiological effects on the auditory system; however, NMFS does not consider TTS-onset to be the lowest level at which Level B harassment may occur. The potential for TTS is considered within NMFS' analysis of potential impacts from Level B harassment.

3. Tolerance

Numerous studies have shown that underwater sounds from industrial activities are often readily detectable by marine mammals in the water at distances of many kilometers. However, other studies have shown that marine mammals at distances more than a few kilometers away often show no apparent response to industrial activities of various types (Miller *et al.,* 2005). This is often true even in cases when the sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of that mammal group. Although various baleen whales, toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to underwater sound from sources such as airgun pulses or vessels under some conditions, at other times, mammals of all three types have shown no overt reactions (e.g., Malme *et al.,* 1986; Richardson *et al.,* 1995; Madsen and Mohl, 2000; Croll *et al.,* 2001; Jacobs and Terhune, 2002; Madsen *et al.,* 2002; Miller *et al.,* 2005). In general, pinnipeds seem to be more tolerant of exposure to some types of underwater sound than are baleen whales. Richardson *et al.* (1995) found that vessel sound does not seem to strongly affect pinnipeds that are already in the water. Richardson *et al.* (1995) went on to explain that seals on haul-outs sometimes respond strongly to the

presence of vessels and at other times appear to show considerable tolerance of vessels, and Brueggeman *et al.* (1992) observed ringed seals (*Pusa hispida*) hauled out on ice pans displaying short-term escape reactions when a ship approached within 0.16–0.31 mi (0.25–0.5 km).

4. Masking

Masking is the obscuring of sounds of interest to an animal by other sounds, typically at similar frequencies. Marine mammals are highly dependent on sound, and their ability to recognize sound signals amid other sound is important in communication and detection of both predators and prey. Background ambient sound may interfere with or mask the ability of an animal to detect a sound signal even when that signal is above its absolute hearing threshold. Even in the absence of anthropogenic sound, the marine environment is often loud. Natural ambient sound includes contributions from wind, waves, precipitation, other animals, and (at frequencies above 30 kHz) thermal sound resulting from molecular agitation (Richardson *et al.,* 1995).

Background sound may also include anthropogenic sound, and masking of natural sounds can result when human activities produce high levels of background sound. Conversely, if the background level of underwater sound is high (e.g., on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked. Ambient sound is highly variable on continental shelves (Thompson, 1965; Myrberg, 1978; Chapman *et al.,* 1998; Desharnais *et al.,* 1999). This results in a high degree of variability in the range at which marine mammals can detect anthropogenic sounds.

Although masking is a phenomenon which may occur naturally, the introduction of loud anthropogenic sounds into the marine environment at frequencies important to marine mammals increases the severity and frequency of occurrence of masking. For example, if a baleen whale is exposed to continuous low-frequency sound from an industrial source, this would reduce the size of the area around that whale within which it can hear the calls of another whale. The components of background noise that are similar in frequency to the signal in question primarily determine the degree of masking of that signal. In general, little is known about the degree to which marine mammals rely upon detection of sounds from conspecifics, predators, prey, or other natural sources. In the absence of specific information about the importance of detecting these natural sounds, it is not possible to predict the impact of masking on marine mammals (Richardson *et al.,* 1995). In general, masking effects are expected to be less severe when sounds are transient than when they are continuous. Masking is typically of greater concern for those marine mammals that utilize low-frequency communications, such as baleen whales, because of how far low-frequency sounds propagate.

5. Behavioral Disturbance

Behavioral responses to sound are highly variable and context-specific. An animal's perception of and response to (in both nature and magnitude) an acoustic event can be influenced by prior experience, perceived proximity, bearing of the sound, familiarity of the sound, etc. (Southall *et al.,* 2007). If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (e.g., Lusseau and Bejder, 2007; Weilgart, 2007).

The studies that address responses of low-frequency cetaceans to non-pulse sounds (such as the sound emitted from a DP vessel thruster) include data gathered in the field and related to several types of sound sources (of varying similarity to chirps), including: vessel noise, drilling and machinery playback, low-frequency M-sequences (sine wave with multiple phase reversals) playback, tactical low-frequency active sonar playback, drill ships, and non-pulse playbacks. These studies generally indicate no (or very limited) responses to received levels in the 90 to 120 dB re: 1μPa range and an increasing likelihood of avoidance and other behavioral effects in the 120 to 160 dB range. As mentioned earlier, though, contextual variables play a very important role in the reported responses and the severity of effects do not increase linearly with received levels. Also, few of the laboratory or field datasets had common conditions, behavioral contexts, or sound sources, so it is not surprising that responses differ.

The studies that address responses of mid-frequency cetaceans to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to chirps) including: pingers, drilling playbacks, ship and ice-breaking noise, vessel noise, Acoustic harassment devices (AHDs), Acoustic Deterrent Devices (ADDs), mid-frequency active sonar, and non-pulse bands and tones. Southall *et al.* (2007) were unable to come to a clear conclusion regarding the results of these studies. In some cases animals in the field showed significant responses to received levels between 90 and 120 dB, while in other cases these responses were not seen in the 120 to 150 dB range. The disparity in results was likely due to contextual variation and the differences between the results in the field and laboratory data (animals typically responded at lower levels in the field).

The studies that address responses of high-frequency cetaceans to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to chirps), including: Pingers, AHDs, and various laboratory non-pulse sounds. All of these data were collected from harbor porpoises. Southall *et al.* (2007) concluded that the existing data indicate that harbor porpoises are likely sensitive to a wide range of anthropogenic sounds at low received levels (around 90 to 120 dB), at least for initial exposures. All recorded exposures above 140 dB induced profound and sustained avoidance behavior in wild harbor porpoises (Southall *et al.,* 2007). Rapid habituation was noted in some but not all studies.

The studies that address the responses of pinnipeds in water to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to chirps), including: AHDs, various non-pulse sounds used in underwater data communication, underwater drilling, and construction noise. Few studies exist with enough information to include them in the analysis. The limited data suggest that exposures to non-pulse sounds between 90 and 140 dB generally do not result in strong behavioral responses of pinnipeds in water, but no data exist at higher received levels (Southall *et al.,* 2007).

Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, it is common practice to estimate how many mammals would be present within a particular distance of activities and/or exposed to a particular level of sound. In most cases, this approach likely overestimates the numbers of

marine mammals that would be affected in some biologically-important manner.

The studies that address the responses of mid-frequency cetaceans to impulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to boomers), including: Small explosives, airgun arrays, pulse sequences, and natural and artificial pulses. The data show no clear indication of increasing probability and severity of response with increasing received level. Behavioral responses seem to vary depending on species and stimuli. Data on behavioral responses of high-frequency cetaceans to multiple pulses is not available. Although individual elements of some non-pulse sources (such as pingers) could be considered pulses, it is believed that some mammalian auditory systems perceive them as non-pulse sounds (Southall *et al.,* 2007).

The studies that address the responses of pinnipeds in water to impulse sounds include data gathered in the field and related to several different sources (of varying similarity to boomers), including: Small explosives, impact pile driving, and airgun arrays. Quantitative data on reactions of pinnipeds to impulse sounds is limited, but a general finding is that exposures in the 150 to 180 dB range generally have limited potential to induce avoidance behavior (Southall *et al.,* 2007).

6. Vessel Strike

Vessels and in-water structures have the potential to cause physical disturbance to marine mammals. Various types of vessels already use the water surrounding Rhode Island and Block Island in particular. Tug boats and barges, both of which would be required during the BIWF construction are slow moving and follow a predictable course. Marine mammals would be able to easily avoid these vessels and are likely already habituated to the presence of numerous vessels.

Anticipated Effects on Marine Mammal Habitat

There are no feeding areas, rookeries, or mating grounds known to be biologically important to marine mammals within the proposed project area. There is also no designated critical habitat for any ESA-listed marine mammals. Harbor seals haul out on Block Island and points along Narragansett Bay, the most important haul-out being on the edge of New Harbor, about 2.4 km from the proposed BIWF landfall on Block Island. The only consistent haul-out locations for gray seals within the vicinity of Rhode Island are around Monomoy National Wildlife Refuge and Nantucket Sound in Massachusetts (more than 80 nautical miles from the proposed project area). NMFS' regulations at 50 CFR 224 designated the nearshore waters of the Mid-Atlantic Bight as the Mid-Atlantic U.S. Seasonal Management Area (SMA) for right whales in 2008. Mandatory vessel speed restrictions are in place in that SMA from November 1 through April 30 to reduce the threat of collisions between ships and right whales around their migratory route and calving grounds.

The BIWF involves activities that would disturb the seafloor and potentially affect benthic and finfish communities. Installation of the inter-array cable and export cable would result in the temporary disturbance of no more than 3.7 and 11.6 acres of seafloor, respectively. These installation activities would also result in temporary and localized increases in turbidity around the proposed project area. DWBI may also be required to install additional protective armoring in areas where the burial depth achieved is less than 1.2 m. DWBI expects that additional protection would be required at a maximum of 1 percent of the entire submarine cable, resulting in a conversion of up to 0.4 acres of soft substrate to hard substrate along the cable route. During the installation of additional protective armoring at the cable crossings and as necessary along the cable route, anchors and anchor chains would temporarily impact about 1.8 acres of bottom substrate during each anchoring event.

The installation of the five WTGs would result in a total impact of about 0.35 acres. In this area, soft substrate would be permanently converted to hard substrate. Construction activities associated with the installation of the jacket foundations and WTGs would also result in the temporary disturbance of 28.9 acres of substrate from the placement of jack-up barge spuds, vessel anchors, and associated anchor sweep. Additional disturbance is also expected within the top few inches of substrate from the anchor chains during foundation installation as they rest on the seafloor or sweep across the bottom in response to bottom currents.

Jet-plowing and impacts from construction vessel anchor placement and/or sweep would cause either the displacement or loss of benthic and finfish resources in the immediate areas of disturbance. This may result in a temporary loss of forage items and a temporary reduction in the amount of benthic habitat available for foraging marine mammals in the immediate proposed project area. However, the amount of habitat affected represents a very small percentage of the available foraging habitat in the proposed project area. Increased underwater sound levels may temporarily result in marine mammals avoiding or abandoning the area.

Because of the temporary nature of the disturbance, the availability of similar habitat and resources in the surrounding area, and the lack of important or unique marine mammal habitat, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

Proposed Mitigation

In order to issue an incidental take authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

Proposed Mitigation Measures

With NMFS' input during the application process, DWBI is proposing the following mitigation measures during impact pile driving and use of the DP vessel thruster:

1. Marine Mammal Exclusion Zone

At the onset of pile driving when the 200 kJ impact pile driving hammer is in use, protected species observers would visually monitor a 200-m radius around each jacket foundation to reduce the potential for injury of marine mammals. After changing to the 600 kJ impact pile driving hammer, protected species observers would visually monitor a 600-m radius. These distances are estimated to be the 180 dB isopleths based on DWBI's sound exposure model. A minimum of two observers would be stationed aboard each noise-producing construction support vessel. Each observer would visually monitor a 360-degree field of vision from the vessel. Observers would begin monitoring at least 30 minutes prior to impact pile driving, continue monitoring during impact pile driving, and stop monitoring 30 minutes after impact pile driving has ended. If a marine mammal is seen approaching or entering the 200-m or 600-m zones during impact pile driving (and following a 50 percent reduction in energy), DWBI would stop

impact pile driving as a precautionary measure to minimize noise impacts on the animal. The reduction would not be implemented at the risk of compromising safety (either human health or environmental) and/or the integrity of the project.

2. Soft-start Procedures

DWBI would use a soft-start (or ramp-up) procedure at the beginning of impact pile driving to alert marine mammals in the area. This procedure would require an initial set of three strikes from the impact hammer at 40 percent energy with a 1-minute waiting period between subsequent 3-strike sets. DWBI would repeat the procedure two additional times. DWBI would initiate a soft-start at the beginning of each day of pile driving, at the beginning of each pile segment, and if pile driving stops for more than 30 minutes. DWBI would not initiate a soft-start if the monitoring zone is obscured by fog, inclement weather, poor lighting conditions, etc.

3. Delay and Powerdown Procedures

DWBI would delay impact pile driving if a marine mammal is observed within the relevant exclusion zone and until the exclusion zone is clear of marine mammals. DWBI proposes to reduce impact pile driving if a marine mammal is seen within or approaching the 200-m or 600-m exclusion zone. DWBI would reduce the hammer energy by 50 percent to a ramp-up level. If a marine mammal continues to move towards the sound source, DWBI would stop impact pile driving operations until the exclusion zone is clear of marine mammals for at least 30 minutes. DWBI would not implement the

4. DP Thruster Power Reduction

A constant tension must be maintained during cable installation and any significant stoppage in vessel maneuverability during jet plow activities would result in damage to the cable. Therefore, during DP vessel operations, DWBI proposes to reduce DP thruster power to the maximum extent possible if a marine mammal approaches or enters a 5-m radius from the vessel (estimated to be the 160-dB isopleth from the vessel). This reduction would not be implemented at the risk of compromising safety and/or the integrity of the BIWF. DWBI would not increase power until the 5-m zone is clear of marine mammals for 30 minutes.

5. Time of Day and Weather Restrictions

DWBI would conduct impact pile driving during daylight hours only, starting approximately 30 minutes after dawn and ending 30 minutes before dusk. If a soft-start is initiated before the onset of inclement weather, DWBI would complete that segment of impact pile driving. DWBI would not initiate new impact pile driving activities until the entire monitoring zone is visible.

Mitigation Conclusions

NMFS has carefully evaluated the applicant's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of continuous noise, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of continuous noise, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of continuous noise, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth, ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

1. An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below;

2. An increase in our understanding of how many marine mammals are likely to be exposed to levels of continuous noise from use of a DP vessel thruster that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS;

3. An increase in our understanding of how marine mammals respond to stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual

rates of recruitment or survival) through any of the following methods:

- Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;

4. An increased knowledge of the affected species; and

5. An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

Proposed Monitoring Measures

DWBI submitted a marine mammal monitoring plan as part of the IHA application. It can be found in section 12 of their application. The plan may be modified or supplemented based on comments or new information received from the public during the public comment period.

1. Visual Monitoring

DWBI would use two protected species observers (in addition to those used for mitigation) to visually monitor the Level B harassment zone during all impact pile driving. During use of the 200 kJ impact pile driving hammer, a 3.6-km radius would be monitored, and during use of the 600 kJ impact pile driving hammer, a 7-km radius (or maximum distance visible) would be monitored. DWBI would also use two protected species observers to visually monitor a 5-m radius around the vessel during DP vessel thruster use. Observers would estimate distances to marine mammals visually, using laser range finders, or by using reticle binoculars during daylight hours. During night operations (DP vessel thruster use only), observers would use night-vision binoculars. Observers would record their position using hand-held or vessel global positioning system units for each sighting, vessel position change, and any environmental change. Each observer would scan the surrounding area for visual indication of marine mammal presence. Observers would be located from the highest available vantage point on the associated operational platform (e.g., support vessel, barge or tug), estimated to be at least 6 m above the waterline.

Prior to initiation of construction work, all crew members on barges, tugs, and support vessels would undergo environmental training, a component of which would focus on the procedures for sighting and protection of marine mammals. DWBI would also conduct a briefing with the construction supervisors and crews and observers to define chains of command, discuss communication procedures, provide an overview of the monitoring purposes, and review operational procedures. The DWBI Construction Compliance Manager (or other authorized individual) would have the authority to stop or delay impact pile driving activities if deemed necessary.

2. Acoustic Field Verification

DWBI would conduct field verification of the estimated 200-m and 600-m exclusion zones during impact pile driving to determine whether the proposed distances correspond accurately to the relevant isopleths.

DWBI would take acoustic measurements during impact pile driving of the last half (deepest pile segment) for any given open-water pile and would also measure from two reference locations at two water depths (a depth at mid-water and at about 1 m above the seafloor). If the field measurements determine that the actual Level A (180-dB isopleth) and Level B (160-dB isopleth) harassment zones are less than or beyond the proposed distances, a new zone may be established accordingly. DWBI would notify NMFS and the USACE within 24 hours if a new marine mammal exclusion zone is established that extends beyond the proposed 200-m or 600-m distances. Implementation of a smaller zone would be contingent on NMFS' review and would not be used until NMFS approves the change.

DWBI would also perform field verification of the 160-dB isopleth associated with DP vessel thruster use during cable installation. DWBI would take acoustic measurements from two reference locations at two water depths (a depth at mid-water and at about 1 m above the seafloor). Similar to field verification during impact pile driving, the DP thruster power reduction zone may be modified as necessary.

Proposed Reporting Measures

Observers would record dates and locations of construction operations; times of observations; location and weather; details of marine mammal sightings (e.g., species, age, numbers, behavior); and details of any observed take.

DWBI proposes to provide the following notifications and reports during construction activities:

- Notification to NMFS and the U.S. Army Corps of Engineers (USACE) within 24-hours of beginning construction activities and again within 24-hours of completion;
- Detailed report of field-verification measurements within 7 days of completion (including: sound levels, durations, spectral characteristics, DP thruster use, etc.) and notification to NMFS and the USACE within 24-hours if a new zone is established;
- Notification to NMFS and USACE within 24-hours if field verification measurements suggest a larger marine mammal exclusion zone;
- Final technical report to NMFS and the USACE within 120 days of completion of the specified activity documenting methods and monitoring protocols, mitigation implementation, marine mammal observations, other results, and discussion of mitigation effectiveness.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner not permitted by the authorization (if issued), such as an injury, serious injury, or mortality (e.g., ship-strike, gear interaction, and/or entanglement), DWBI shall immediately cease the specified activities and immediately report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Michelle.Magliocca@noaa.gov* and the Northeast Regional Stranding Coordinator at 978–281–9300 (*Mendy.Garron@noaa.gov*). The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

DWBI shall not resume its activities until we are able to review the

circumstances of the prohibited take. We will work with DWBI to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. DWBI may not resume their activities until notified by us via letter, email, or telephone.

In the event that DWBI discovers an injured or dead marine mammal, and the lead visual observer determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition), DWBI shall immediately report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Michelle.Magliocca@noaa.gov* and the Northeast Regional Stranding Coordinator at 978–281–9300 (*Mendy.Garron@noaa.gov*). The report must include the same information identified in the paragraph above this section. Activities may continue while we review the circumstances of the incident. We would work with DWBI to determine whether modifications in the activities are appropriate.

In the event that DWBI discovers an injured or dead marine mammal, and the lead visual observer determines that the injury or death is not associated with or related to the authorized activities (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), DWBI would report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Michelle.Magliocca@noaa.gov* and the Northeast Regional Stranding Coordinator at 978–281–9300 (*Mendy.Garron@noaa.gov*), within 24 hours of the discovery. DWBIT would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to us.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Project activities that have the potential to harass marine mammals, as defined by the MMPA, include noise associated with impact pile driving, and noise associated with the use of DP vessel thrusters during cable installation. Harassment could take the form of masking, temporary threshold shift, avoidance, or other changes in marine mammal behavior. NMFS anticipates that impacts to marine mammals would be in the form of behavioral harassment and no take by injury, serious injury, or mortality is proposed. NMFS does not anticipate take resulting from the movement of vessels associated with construction because there will be a limited number of vessels moving at slow speeds over a relatively shallow, nearshore area.

NMFS' current acoustic exposure criteria for estimating take are shown in Table 3 below. DWBI's modeled distances to these acoustic exposure criteria are shown in Table 4. Details on the model characteristics and results are provided in the Underwater Acoustic Report at the end of DWBI's application (see **ADDRESSES**). DWBI and NMFS believe that this estimate represents the worst-case scenario and that the actual distance to the Level B harassment threshold may be shorter.

TABLE 3—NMFS' CURRENT ACOUSTIC EXPOSURE CRITERIA

Non-explosive sound		
Criterion	Criterion definition	Threshold
Level A Harassment (Injury)	Permanent Threshold Shift (PTS). (Any level above that which is known to cause TTS).	180 dB re 1 microPa-m (cetaceans)/190 dB re 1 microPa-m (pinnipeds) root mean square (rms).
Level B Harassment	Behavioral Disruption (for impulse noises)	160 dB re 1 microPa-m (rms).
Level B Harassment	Behavioral Disruption (for continuous, noise)	120 dB re 1 microPa-m (rms).

TABLE 4—DWBI'S MODELED DISTANCES TO ACOUSTIC EXPOSURE CRITERIA

Activity	Distance to Level B harassment (160 or 120 dB)	Distance to Level A harassment (180/190 dB)
Impact pile driving (hammer energy = 600 kJ)	7,000 m	600 m
Impact pile driving (hammer energy = 200 kJ)	3,600 m	200 m
DP vessel thruster use	4,750 m	<5 m

DWBI estimated species densities within the proposed project area in order to estimate the number of marine mammal exposures to sound levels above 120 dB (continuous noise) or 160 dB (impulsive noise). DWBI used sightings per unit effort (SPUE) from Kenney and Vigness-Raposa (2009) for relative cetacean abundance and the Northeast Navy OPAREA Density Estimates (DoN, 2007) for seal abundance. Based on multiple reports, harbor seal abundance off the coast of Rhode Island is thought to be about 20 percent of the total abundance for southern New England. Because the seasonality and habitat use of gray seals off the coast of Rhode Island roughly overlaps with harbor seals, DWBI applied this 20 percent estimate to both pinniped species. The 2007 and 2009 density estimates relied upon for this proposed authorization are the best scientific data available. NMFS is not aware of any efforts to collect more recent density estimates than those relied upon here.

Estimated takes were calculated by multiplying the average highest species density (per 100 km^2) by the zone of

influence, multiplied by a correction factor of 1.5 to account for marine mammals underwater, multiplied by the number of days of the specified activity. A detailed description of the DWBI's model used to calculate zones of influence is provided in the Underwater Acoustic Report at the end of their application (see **ADDRESSES**).

DWBI used a zone of influence of 89.6 km^2 and a total construction period of 20 days to estimate take from impact pile driving. This zone of influence is based on use of the largest 600 kJ impact hammer. Jacket foundation installation (requiring impact pile driving) is scheduled to occur between the months of May through July or August through October. DWBI used a zone of influence of 25.1 km^2 and a maximum installation period of 28 days to estimate take from use of the DP vessel thruster during cable installation. The zone of influence represents the average ensonified area across the three representative water depths along the cable route (10 m, 20 m, and 40 m). DWBI expects cable installation to occur between April and August.

To be conservative, DWBI based take calculations on the highest seasonal species density over which impact pile driving and use of the DP vessel thruster was scheduled to occur. DWBI's requested take numbers are provided in Table 5 and this is also the number of takes NMFS is proposing to authorize. DWBI's calculations do not take into account whether a single animal is harassed multiple times or whether each exposure is a different animal. Therefore, the numbers in Table 5 are the maximum number of animals that may be harassed during impact pile driving (i.e., DWBI assumes that each exposure event is a different animal). These estimates do not account for mitigation measures that DWBI would implement during the specified activities.

DWBI did not request, and NMFS is not proposing, take from vessel strike. We do not anticipate marine mammals to be impacted by vessel movement because a limited number of vessels would be involved in construction activities and they would mostly move at slow speeds throughout construction.

TABLE 5—DWBI'S ESTIMATED TAKE FOR THE BIWF PROJECT

Common species name	Maximum seasonal density (per 100 km^2)	Estimated take by Level B harassment	Maximum seasonal density (per 100 km^2)	Estimated take by Level B harassment	Total estimated take
	Impact Pile Driving		DP Vessel Thruster		
Atlantic white-sided dolphin	7.46	201	1.23	13	214
Short-beaked common dolphin	8.21	221	2.59	28	249
Harbor porpoise	0.47	13	0.74	8	21
Minke whale	0.44	12	0.14	2	14
Fin whale	1.92	52	2.15	23	75
Humpback whale	0.11	3	0.11	2	5
North Atlantic right whale	0.04	2	0.06	1	3
Gray seal	14.16	77	14.16	30	107
Harbor seal	9.74	53	9.74	21	74

TABLE 6—SPECIES INFORMATION AND TAKE PROPOSED FOR AUTHORIZATION BY NMFS

Common species name	Take proposed for authorization	Abundance of stock	Percentage of stock potentially affected	Population trend
Atlantic white-sided dolphin	214	23,390	0.9	(1)
Short-beaked common dolphin	249	120,743	0.2	(1)
Harbor porpoise	21	89,054	0.02	(1)
Minke whale	14	8,987	0.16	(1)
Fin whale	75	3,985	1.88	(1)
Humpback whale	5	11,570	0.04	Increasing (2)
North Atlantic right whale	3	444	0.67	Increasing (2)
Gray seal	107	348,900	0.03	Increasing (2)
Harbor seal	74	99,340	0.07	N/A (1)

[1] N/A
[2] Increasing.

Analysis and Preliminary Determinations

Negligible Impact

Negligible impact is ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival'' (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number

and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

DWBI did not request, and NMFS is not proposing, take of marine mammals by injury, serious injury, or mortality. NMFS expects that take would be in the form of behavioral harassment. Exposure to sound levels above 160 dB during impact pile driving would not last for more than 12 hours per day for 20 non-consecutive days. Exposure to sound levels above 120 dB during use of the DP vessel thruster may last for 24 hours per day for 28 days. While use of the DP thruster may last for consecutive days, the vessel would be moving and therefore not focused on one specific area for the entire duration. Given the duration and intensity of the activity, and the fact that shipping contributes to the ambient sound levels around Rhode Island, NMFS does not anticipate the proposed take estimates to impact annual rates of recruitment or survival. Animals may temporarily avoid the immediate area, but are not expected to permanently abandon the area. Marine mammal habitat may be impacted by elevated sound levels and sediment disturbance, but these impacts would be temporary. Furthermore, there are no feeding areas, rookeries, or mating grounds known to be biologically important to marine mammals within the proposed project area. There is also no designated critical habitat for any ESA-listed marine mammals. The proposed mitigation measures are expected to reduce the number and/or severity of takes by (1) giving animals the opportunity to move away from the sound source before the pile driver reaches full energy; (2) reducing the intensity of exposure within a certain distance by reducing the DP vessel thruster power; and (3) preventing animals from being exposed to sound levels reaching 180 dB during impact pile driving.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from DWBI's BIWF project will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

The number of individual animals that may be exposed to sound levels above 160 dB (impact pile driving) and 120 dB (DP vessel thruster) is small relative to the species or stock size (Table 6). The proposed take numbers are the maximum numbers of animals that are expected to be harassed during the BIWF project; it is possible that some of these exposures may occur to the same individual. NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

There are three marine mammal species that are listed as endangered under the ESA: Fin whale, humpback whale, and North Atlantic right whale. Under section 7 of the ESA, the USACE (the federal permitting agency for the actual construction) consulted with NMFS on the proposed BIWF project. NMFS Northeast Region issued a Biological Opinion on January 30, 2014, concluding that the Block Island Wind Farm project (which includes the BIWF) may adversely affect but is not likely to jeopardize the continued existence of fin whale, humpback whale, or North Atlantic right whale. NMFS is also consulting internally on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. The Biological Opinion may be amended to include an incidental take exemption for these marine mammal species.

National Environmental Policy Act (NEPA)

The USACE is preparing an Environmental Assessment on the construction and operation of the BIWF. The USACE's EA is not expected to be finalized prior to NMFS making a determination on the issuance of an IHA. Therefore, NMFS is currently conducting an analysis, pursuant to the NEPA, to determine whether or not DWBI's proposed activity may have a significant effect on the human environment. This analysis will be completed prior to the issuance or denial of this proposed IHA.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to DWBI for conducting impact pile driving and use of a DP vessel thruster during construction of the BIWF from late 2014 to late 2015, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The proposed IHA language is provided next.

This section contains a draft of the IHA itself. The wording contained in this section is proposed for inclusion in the IHA (if issued).

Deepwater Wind Block Island, LLC (DWBI) (56 Exchange Terrace, Suite 101, Providence, RI 02903–1772) is hereby authorized under section 101(a)(5)(D) of the Marine Mammal Protection Act (16 U.S.C. 1371(a)(5)(D)) and 50 CFR 216.107, to harass marine mammals incidental to impact pile driving and DP vessel thruster use during construction of the Block Island Wind Farm (BIWF).

1. This Authorization is valid from December 1, 2014 through November 31, 2015.

2. This Authorization is valid for construction of the BIWF off Block Island, Rhode Island, as described in the Incidental Harassment Authorization (IHA) application.

3. The holder of this authorization (Holder) is hereby authorized to take, by Level B harassment only, 214 Atlantic white-sided dolphins (*Lagenorhynchus acutus*), 249 short-beaked common dolphins (*Delphinus delphis*), 21 harbor porpoises (*Phocoena phocoena*), 14 minke whales (*Balaenoptera acutorostrata*), 75 fin whales (*Balaenoptera physalus*), 5 humpback whales (*Megaptera novaeangliae*), 3 North Atlantic right whales (*Eubalaena glacialis*), 107 gray seals (*Halichoerus grypus),* and 74 harbor seals (*Phoca vitulina*) incidental to impact pile driving DP vessel thruster use associated with construction of the BIWF.

4. The taking of any marine mammal in a manner prohibited under this IHA must be reported immediately to NMFS' Northeast Region, 55 Great Republic Drive, Gloucester, MA 01930–2276; phone 978–281–9328, and NMFS' Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910; phone 301–427–8401; fax 301–713–0376.

5. The Holder or designees must notify NMFS' Northeast Region and Headquarters at least 24 hours prior to the seasonal commencement of the specified activity (see contact information in 4 above).

6. Mitigation Requirements

The Holder is required to abide by the following mitigation conditions listed in 6(a)–(e). Failure to comply with these conditions may result in the

modification, suspension, or revocation of this IHA.

(a) *Marine Mammal Exclusion Zone:* Protected species observers shall visually monitor an estimated 180-dB isopleth during all impact pile driving activity to ensure that no marine mammals enter this zone. A minimum of two observers shall be stationed aboard the noise-producing support vessel and shall monitor a 360-degree field of vision. Observers shall begin monitoring at least 30 minutes prior to impact pile driving, continue monitoring during impact pile driving, and stop monitoring 30 minutes after impact pile driving has ended.

(b) *Soft-start Procedures:* Soft-start procedures shall be implemented at the beginning of each day and if pile driving has stopped for more than 30 minutes. Contractors shall initiate a set of three strikes from the impact hammer at 40 percent energy with a 1-minute waiting period between subsequent three-strike sets. This procedure shall be repeated two additional times before full energy is reached.

(c) *Delay and Powerdown Procedures:* The Holder shall delay impact pile driving if a marine mammal is observed within the estimated 180-dB isopleth marine mammal exclusion zone and until the exclusion zone is clear of marine mammals. The Holder shall reduce impact pile driving energy by 50 percent if a marine mammal continues toward or enters the 180-dB isopleth.

(d) *DP Thruster Power Reduction:* The Holder shall reduce DP thruster power to the maximum extent possible if a marine mammal approaches or enters the estimated 160-dB isopleth from the vessel. The Holder shall not increase power until the zone is clear of marine mammals for 30 minutes.

(e) *Time of Day and Weather Restrictions:* The Holder shall conduct impact pile driving during daylight hours only, starting approximately 30 minutes after dawn and ending 30 minutes before dusk unless a situation arises where stopping pile driving would compromise safety (either human health or environmental) and/or the integrity of the project. The Holder shall not initiate impact pile driving until the entire marine mammal exclusion zone is visible.

7. Monitoring Requirements

The Holder is required to abide by the following monitoring conditions listed in 7(a)–(b). Failure to comply with these conditions may result in the modification, suspension, or revocation of this IHA.

(a) *General:* If the Level B harassment area is obscured by fog or poor lighting conditions, the start of impact pile driving shall be delayed until the area is visible.

(b) *Visual Monitoring:* Protected species observers shall survey the estimated 160-dB isopleths 30 minutes before, during, and 30 minutes after all in-water impact pile driving and the estimated 120-dB isopleth 30 minutes before, during, and 30 minutes after use of DP vessel thrusters. The observers shall be stationed on the highest available vantage point on the associated operating platform. Observers shall estimate distances to marine mammals visually, using laser range finders, or by using reticle binoculars during daylight hours. During night operations (DP vessel thruster use only), observers shall use night-vision binoculars. Information recorded during each observation shall be used to estimate numbers of animals potentially taken and shall include the following:

- Numbers of individuals observed;
- Frequency of observation;
- Location (i.e., distance from the sound source);
- Impact pile driving status (i.e., soft-start, active, post pile driving, etc.);
- DP vessel thruster status (i.e., energy level); and
- Reaction of the animal(s) to relevant sound source (if any) and observed behavior, including bearing and direction of travel.

(c) Acoustic Field Verification: The Holder shall conduct field verification of the estimated 180-dB isopleths during impact pile driving. Acoustic measurements shall be taken during impact pile driving of the last half (deepest pile segment) for any given open-water pile and from two reference locations at two water depths (a depth at mid-water and at about 1 m above the seafloor). If the field measurements show that the 180-dB isopleth is less than or beyond the initially proposed distances, a new zone may be established accordingly. The Holder shall notify NMFS within 24 hours if a new marine mammal exclusion zone is established that extends beyond what is initially established. Implementation of a smaller zone shall be contingent on NMFS' review and shall not be used until NMFS approves the change.

The Holder shall also perform field verification of the 160-dB isopleth associated with DP vessel thruster use during cable installation. Acoustic measurements shall be taken from two reference locations at two water depths (a depth at mid-water and at about 1 m above the seafloor). Similar to field verification during impact pile driving, the DP thruster power reduction zone may be modified as necessary.

8. Reporting Requirements

The Holder shall provide the following notifications during construction activities:

- Notification to NMFS within 24-hours of beginning construction and again within 24-hours of completion;
- Detailed report of field-verification measurements within 7 days of completion and notification to NMFS within 24-hours if a new zone is established; and
- Notification to NMFS within 24-hours if field verification measurements suggest a larger marine mammal exclusion zone.

The Holder shall submit a technical report to the Office of Protected Resources, NMFS, within 120 days of the conclusion of monitoring.

(a) The report shall contain the following information:

- A summary of the activity and monitoring plan (i.e., dates, times, locations);
- A summary of mitigation implementation;
- Monitoring results and a summary that addresses the goals of the monitoring plan, including the following:
  - Environmental conditions when observations were made:
  - Water conditions (i.e., Beaufort sea-state, tidal state)
  - Weather conditions (i.e., percent cloud cover, visibility, percent glare)
  - Date and time survey initiated and terminated
  - Date, time, number, species, and any other relevant data regarding marine mammals observed (for pre-activity, during activity, and post-activity surveys)
  - Description of the observed behaviors (in both the presence and absence of activities):
- If possible, the correlation to underwater sound level occurring at the time of any observable behavior
- Estimated exposure/take numbers during activities; and
- An assessment of the implementation and effectiveness of prescribed mitigation and monitoring measures.

(b) In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner not permitted by the authorization (if issued), such as an injury, serious injury, or mortality (e.g., ship-strike, gear interaction, and/or entanglement), the Holder shall immediately cease the specified activities and immediately report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of

Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Michelle.Magliocca@noaa.gov* and the Northeast Regional Stranding Coordinator at 978–281–9300 (*Mendy.Garron@noaa.gov*). The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Name and type of vessel involved;
- Vessel's speed during and leading up to the incident;
- Description of the incident;
- Status of all sound source use in the 24 hours preceding the incident;
- Water depth;
- Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

The Holder shall not resume its activities until we are able to review the circumstances of the prohibited take. NMFS will work with the Holder to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The Holder may not resume activities until notified by us via letter, email, or telephone.

(c) In the event that the Holder discovers an injured or dead marine mammal, and the lead visual observer determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as we describe in the next paragraph), the Holder shall immediately report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Michelle.Magliocca@noaa.gov* and the Northeast Regional Stranding Coordinator at 978–281–9300 (*Mendy.Garron@noaa.gov*). The report must include the same information identified in the paragraph above this section. Activities may continue while we review the circumstances of the incident. NMFS will work with the Holder to determine whether modifications in the activities are appropriate.

(d) In the event that the Holder discovers an injured or dead marine mammal, and the lead visual observer determines that the injury or death is not associated with or related to the authorized activities (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the Holder shall report the incident to the Incidental Take Program Supervisor, Permits and Conservation Division, Office of Protected Resources, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *Michelle.Magliocca@noaa.gov* and the Northeast Regional Stranding Coordinator at 978–281–9300 (*Mendy.Garron@noaa.gov*) within 24 hours of the discovery. The Holder shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to us.

9. A copy of this IHA must be in the possession of the lead contractor on site and protected species observers operating under the authority of this authorization.

10. This IHA may be modified, suspended, or withdrawn if the Holder fails to abide by the conditions prescribed herein or if the authorized taking is having more than a negligible impact on the species or stock of affected marine mammals.

Request for Public Comments

NMFS requests comment on our analysis, the draft authorization, and any other aspect of the Notice of Proposed IHA for DWBI's construction of the BIWF. Please include with your comments any supporting data or literature citations to help inform our final decision on DWBI's request for an MMPA authorization.

Dated: March 20, 2014.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–06533 Filed 3–24–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2014–OS–0040]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Defense Finance and Accounting Service proposes to alter a system of records, T7207, entitled ''General Accounting and Finance System—Defense Travel Records (GAFS–DTS)'' in its inventory of record systems subject to the Privacy Act of 1974, as amended. This system will enable DFAS, the Air Force, Defense Security Service, and National Geospatial-Intelligence Agency to produce transaction-driven financial statements in support of Defense Finance and Accounting Service financial mission.

DATES: Comments will be accepted on or before April 24, 2014. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- Federal Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory L. Outlaw, Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–HKC/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150 or at (317) 212–4591.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Office Web site at *http://dpclo.defense.gov/*.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on June 21, 2013, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–

130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 20, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T–7207

SYSTEM NAME:

General Accounting and Finance System—Defense Travel Records (December 2, 2008, 73 FR 73246)

CHANGES:

SYSTEM ID:

Delete entry and replace with ''T7207.''

SYSTEM NAME:

Delete entry and replace with ''General Accounting and Finance System—Defense Travel Records (GAFS–DTS).''

SYSTEM LOCATION:

Delete entry and replace with ''Defense Information Systems Agency, Defense Enterprise Computing Center, 7879 Wardleigh Road, Hill Air Force Base, Ogden, UT 84056–5997.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Defense Finance and Accounting Service civilian employees, United States Air Force (active duty, reserve, and guard members), Department of Defense civilian employees for the Defense Security Service, and the National Geospatial-Intelligence Agency.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''5 U.S.C. 301, Departmental Regulations; DoD Directive 5118.5, Department of Defense Financial Management Regulation (DoDFMR) 7000.14–R Vol. 4, Defense Finance and Accounting Service; 31 U.S.C. Sections 3512, Executive agency accounting and other financial management reports and plans and 3513, Financial reporting and accounting system; and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

Delete entry and replace with ''The system will enable the Defense Finance and Accounting Service, United States Air Force, Defense Security Service, and the National Geospatial-Intelligence Agency (NGA) to produce transaction-driven financial statements in support of Defense Finance and Accounting Service financial mission.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the United States Department of the Treasury to report the financial status of the General and Working Capital funds.

To the Government Accountability Office (GAO) for audit purposes.

The DoD Blanket Routine Uses published at the beginning of the DFAS compilation of systems of records notices may apply to this system.''

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their duties. Passwords and user identifications (CAC and PKI) are used to control access to the system data, and procedures are in place to deter browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the system.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Records are cut off at the end of the fiscal year, and destroyed in 6 years and 3 months after cutoff. Records are destroyed by degaussing.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Defense Finance and Accounting Service-Columbus, I&T, System Manager, Cash, General Funds and Miscellaneous Division, 3990 E Broad Street, Columbus, OH 43213–1152.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Requests should contain individual's full name, SSN for verification, current address, and provide a reasonable description of what they are seeking.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this record system should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Request should contain individual's full name, SSN for verification, current address, and telephone number.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The Defense Finance and Accounting Service (DFAS) rules for accessing records, for contesting contents and appealing initial agency determinations are published in Defense Finance and Accounting Service Regulation 5400.11–R, 32 CFR 324; or may be obtained from the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Defense Travel System (DTS).''

* * * * *

[FR Doc. 2014–06479 Filed 3–24–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Piñon Canyon Maneuver Site Training and Operations Environmental Impact Statement for Fort Carson, CO

AGENCY: Department of the Army, DoD.

ACTION: Notice of Intent.

SUMMARY: The Department of the Army announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the environmental and socioeconomic impacts of proposed training and operations activities at Piñon Canyon Maneuver Site (PCMS), CO. The PCMS is the maneuver site for Fort Carson, CO. The PCMS is located near Trinidad, CO, approximately 150 miles southeast of Fort Carson, and

consists of approximately 235,000 acres. The EIS will assess proposed PCMS training, infrastructure improvement, and land management activities to support Fort Carson training requirements. It will also assess the impacts of reclassification of the airspace that overlies PCMS. The proposed action does not include, nor would it require, expansion of PCMS.

ADDRESSES: Comments on the Proposed Action or requests for additional information should be sent to the Fort Carson NEPA Program Manager, Directorate of Public Works, Environmental Division, 1626 Evans Street, Building 1219, Fort Carson, CO 80913–4362, or call (719) 526–4666. Comments may also be submitted via email to: *usarmy.carson.imcom-central.list.dpw-ed-nepa@mail.mil.*

FOR FURTHER INFORMATION CONTACT: The Fort Carson Public Affairs Office at (719) 526–1269, Monday through Friday, 7:30 a.m. to 4:00 p.m. MST; or by email to: *usarmy.carson.hqda-ocpa.list.pao-officer@mail.mil.*

SUPPLEMENTARY INFORMATION: The EIS is being prepared to meet the requirements of the National Environmental Policy Act (NEPA) to evaluate the environmental and socioeconomic impacts of implementing proposed actions at PCMS.

PCMS supports readiness training for units up to Brigade-size stationed at Fort Carson and for visiting Reserve and National Guard units. Training must fully integrate ground and air resources and reflect the modern battlefield environment for which Soldiers are preparing. The PCMS must accommodate training for current and emerging tactics and new equipment; provide training infrastructure, land and airspace within PCMS necessary to support training requirements; and support assigned and visiting units.

Advances in equipment and weapons systems, to include their incorporation into tactical units, dictate changes in how the Army trains, alterations to ranges (including range airspace) for maneuver training and doctrinal changes to accommodate mission-essential training prior to global deployments. PCMS must support training that incorporates these technological and doctrinal changes.

The proposed action would accommodate additional training tasks and equipment to enable training of current and future Fort Carson units. Additional tasks and equipment include unmanned aerial and ground systems, jamming systems, laser target sightings, non-explosive mortars up to 120 mm, and non-explosive aerial gunnery. Unmanned aerial systems would be reconnaissance systems, with no live-fire capability. The Army recently announced decisions to inactivate one Armor Brigade Combat Team (BCT), realign an Armor BCT and an Infantry BCT by adding an additional maneuver battalion to each, and convert the remaining Armor BCT to a Stryker BCT. The final configuration will result in three BCTs: One Armor, one Infantry, and one Stryker. PCMS must support the training needs of these BCTs. Reclassification of the special use airspace that overlies PCMS (not to extend over land outside the boundaries of PCMS) to restricted airspace is part of the proposed action. This reclassification is required to conduct integrated and realistic air and land training and to accommodate high-angle, indirect-fire weapon systems and airborne laser target sighting system training. This proposed reclassification would enable the safe integration of airborne systems (such as unmanned aerial systems) for force-on-force training. Artillery, high explosive aerial ordnance, and Stinger and Hellfire missiles will not be fired at PCMS. Non-dud producing munitions fired from aerial systems, including 5.56mm, 7.62mm, .50 caliber, 20mm, 30mm, 2.75'' inert rockets, none of which exceed 81mm, will not produce residual unexploded munitions.

The proposed action could have significant impacts to airspace, soil erosion, wildfire management, cultural resources, and water resources. Mitigation measures will be identified for adverse impacts.

The proposed action only considers activity within the boundaries of PCMS. The proposed action does not include, nor would it require, any expansion of PMCS. No additional land will be sought or acquired as a result of this action.

In addition to analyzing reasonably foreseeable cumulative impacts, which could include additional site infrastructure capable of hosting more local support staff, the EIS will also analyze a No Action Alternative. Under the No Action Alternative, current mission activities and training operations would continue, as well as range use and training land management. Management would continue to include routine maintenance and natural resource sustainment activities. This alternative, required by NEPA, encompasses baseline conditions and will serve as a benchmark against which the environmental impacts of the proposed action can be compared. Other reasonable alternatives will be considered for evaluation in the EIS.

Scoping and public comments: Governmental agencies, interest groups, and individuals are invited to participate in the scoping process. Public meetings will be held in Trinidad and La Junta, Colorado. Information on the time and location of the public meetings will be published locally. In addition, the Army will engage in consultation with federally recognized Native American tribes regarding the proposed action. The scoping process will help identify possible alternatives, potential environmental impacts, and key issues of concern to be analyzed in the EIS. It will also eliminate issues which are not significant or which have been covered by prior environmental reviews from detailed consideration. Written comments will be accepted within 30 days of publication of the Notice of Intent in the **Federal Register**.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2014–06423 Filed 3–24–14; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Extension of Comment Period for the Draft Environmental Impact Statement/Overseas Environmental Impact Statement for Military Readiness Activities in the Northwest Training and Testing Study Area

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: A notice of availability was published by the U.S. Environmental Protection Agency in the **Federal Register** (*79 FR 4158*) on January 24, 2014, for the Northwest Training and Testing (NWTT) Environmental Impact Statement/Overseas Environmental Impact Statement (EIS/OEIS). The public comment period ends on March 25, 2014. This notice announces a 21 day extension of the public comment period until April 15, 2014.

FOR FURTHER INFORMATION CONTACT: Naval Facilities Engineering Command Northwest, Attention: Ms. Kimberly Kler—NWTT EIS/OEIS Project Manager, 1101 Tautog Circle, Suite 203, Silverdale, WA 98315–1101; or *http://www.NWTTEIS.com.*

SUPPLEMENTARY INFORMATION: The public comment period on the NWTT EIS/OEIS will be extended until April 15, 2014. Comments may be submitted

in writing to Naval Facilities Engineering Command Northwest, Attention: Ms. Kimberly Kler, NWTT EIS/OEIS Project Manager, 1101 Tautog Circle Suite 203, Silverdale, Washington, 98315–1101. In addition, comments may be submitted online at *http://www.NWTTEIS.com* during the comment period. All written comments must be postmarked by April 15, 2014, to ensure they become part of the official record. All written comments will be addressed for the Final EIS.

Copies of the Draft EIS/OEIS are available for public review at the following public libraries:

1. Everett Main Library, 2702 Hoyt Ave., Everett, WA 98201.
2. Gig Harbor Library, 4424 Point Fosdick Drive W., Gig Harbor, WA 98335.
3. Jefferson County Library—Port Hadlock, 620 Cedar Ave., Port Hadlock, WA 98339.
4. Kitsap Regional Library—Poulsbo, 700 NE Lincoln Road, Poulsbo, WA 98370.
5. Oak Harbor Public Library, 1000 SE Regatta Drive, Oak Harbor, WA 98277.
6. Port Angeles Main Library, 2210 S. Peabody St., Port Angeles, WA 98362.
7. Port Townsend Public Library, 1220 Lawrence St., Port Townsend, WA 98368.
8. Sylvan Way Library—Bremerton, 1301 Sylvan Way, Bremerton, WA 98310.
9. Timberland Regional Library—Aberdeen, 121 E. Market St., Aberdeen, WA 98520.
10. Timberland Regional Library—Hoquiam, 420 7th St., Hoquiam, WA 98550.
11. Driftwood Public Library, 801 SW Highway 101, Lincoln City, OR 97367.
12. Lincoln County Library District, 1247 NW Grove, No. 2, Newport, OR 97365.
13. Newport Public Library, 35 NW Nye St., Newport, OR 97365.
14. Astoria Public Library, 450 10th St., Astoria, OR 97103.
15. Tillamook Main Library, 1716 Third St., Tillamook, OR 97141.
16. Fort Bragg Branch Library, 499 Laurel St., Fort Bragg, CA 95437.
17. Humboldt County Public Library, Eureka Main Library, 1313 3rd St., Eureka, CA 95501.
18. Humboldt County Public Library, Arcata Main Library, 500 7th St., Arcata, CA 95521.
19. Juneau Public Library—Downtown Branch, 292 Marine Way, Juneau, AK 99801.
20. Ketchikan Public Library, 629 Dock St., Ketchikan, AK 99901.

Copies of the Draft EIS are available for electronic viewing at *http://www.NWTTEIS.com*.

Dated: March 19, 2014.

P. A. Richelmi,

Lieutenant, Office of the Judge Advocate General, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 2014–06505 Filed 3–24–14; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2013–ICCD–0047]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; IDEA Part B State Performance Plan (SPP) and Annual Performance Report (APR)

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before April 24, 2014.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0047 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov*. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E115, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Rebecca Walawender, 202–845–7399.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: IDEA Part B State Performance Plan (SPP) and Annual Performance Report (APR).

OMB Control Number: 1820–0624.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Federal Government.

Total Estimated Number of Annual Responses: 60.

Total Estimated Number of Annual Burden Hours: 102,000.

Abstract: In accordance with 20 U.S.C. 1416(b)(1), not later than 1 year after the date of enactment of the Individuals with Disabilities Education, as revised in 2004, each State must have in place a performance plan that evaluates the States efforts to implement the requirements and purposes of Part B and describe how the State will improve such implementation. This plan is called the Part B State Performance Plan (Part B–SPP). In accordance with 20 U.S.C. 1416(b)(2)(C)(ii) the State shall report annually to the public on the performance of each local educational agency located in the State on the targets in the States performance plan. The State also shall report annually to the Secretary on the performance of the State under the States performance plan. This report is called the Part B Annual Performance Report (Part B–APR). Information Collection 1820–0624 corresponds to 34 CFR 300.600–300.602.

Dated: March 19, 2014.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–06457 Filed 3–24–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2013–ICCD–0048]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; IDEA Part C State Performance Plan (SPP) and Annual Performance Report (APR)

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before April 24, 2014.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0048 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov*. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E115, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Rebecca Walawender, 202–245–7399.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: IDEA Part C State Performance Plan (SPP) and Annual Performance Report (APR).

OMB Control Number: 1820–0578.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 56.

Total Estimated Number of Annual Burden Hours: 61,600.

Abstract: In accordance with 20 U.S.C. 1416(b)(1) and 20 U.S.C. 1442, each State lead implementing agency must have in place a performance plan that evaluates the agency's efforts to implement the requirements and purposes of Part C of the Individuals with Disabilities Education Act and describe how the agency will improve implementation. This plan is called the Part C State Performance Plan (Part C SPP). In accordance with 20 U.S.C. 1416(b)(2)(C)(ii) the lead agency shall report annually to the public on the performance of each early intervention service program located in the State on the targets in the lead agency's performance plan. The lead agency also shall report annually to the Secretary on the performance of the State under the lead agency's performance plan. This report is called the Part C Annual Performance Report (Part C APR).

Dated: March 20, 2014.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–06491 Filed 3–24–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Laboratory. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, April 9, 2014, 8:00 a.m.–2:30 p.m.

The opportunity for public comment is at 11:30 a.m.

This time is subject to change; please contact the Federal Coordinator (below) for confirmation of times prior to the meeting.

ADDRESSES: Hilton Garden Inn, 700 Lindsay Boulevard, Idaho Falls, ID 83402.

FOR FURTHER INFORMATION CONTACT: Robert L. Pence, Federal Coordinator, Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, MS–1203, Idaho Falls, Idaho 83415. Phone (208) 526–6518; Fax (208) 526–8789 or email: *pencerl@id.doe.gov* or visit the Board's Internet home page at: *http://inlcab.energy.gov/.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Topics (agenda topics may change up to the day of the meeting; please contact Robert L. Pence for the most current agenda):

- Recent Public Involvement
- Idaho Cleanup Project Progress to Date (Including status updates on Transuranic Waste, Spent Nuclear Fuel, and the Integrated Waste Treatment Unit)
- Update on Waste Isolation Pilot Plant
- Integrated Waste Treatment Unit Progress Update

- Discussion of Draft Recommendation Regarding Land Use Changes
- U.S. Geological Survey's Groundwater Sampling Program
- Remote Handled Transuranic/Sodium Treatment System Status

Public Participation: The EM SSAB, Idaho National Laboratory, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Robert L. Pence at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Robert L. Pence at the address or telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Robert L. Pence, Federal Coordinator, at the address and phone number listed above. Minutes will also be available at the following Web site: *http://inlcab.energy.gov/pages/meetings.php*.

Issued at Washington, DC on March 19, 2014.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2014–06549 Filed 3–24–14; 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: RP14–206–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: Refund Report in Docket Nos. RP14–206, RP08–426, RP10–1398.

Filed Date: 3/13/14.

Accession Number: 20140313–5035.

Comments Due: 5 p.m. ET 3/25/14.

Docket Numbers: RP14–619–000.

Applicants: Natural Gas Pipeline Company of America.

Description: Cancellation of Rate Schedule X–50 to be effective 3/13/2014.

Filed Date: 3/13/14.

Accession Number: 20140313–5122.

Comments Due: 5 p.m. ET 3/25/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR § 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 14, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–06415 Filed 3–24–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC14–68–000.

Applicants: Upper Peninsula Power Company, Integrys Energy Group, Inc., Balfour Beatty Infrastructure Partners GP Limited.

Description: Joint Application for Authorization under Section 203 of the Federal Power Act and Request for Shortened Comment Period and Expedited Action of Upper Peninsula Power Company, et al.

Filed Date: 3/14/14.

Accession Number: 20140314–5173.

Comments Due: 5 p.m. ET 4/4/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2249–003.

Applicants: Portland General Electric Company.

Description: Amendment to January 30, 2014 Notice of Non-Material Change in Status of Portland General Electric Company.

Filed Date: 3/14/14.

Accession Number: 20140314–5090.

Comments Due: 5 p.m. ET 4/4/14.

Docket Numbers: ER10–2290–002; ER10–2187–001.

Applicants: Avista Corporation.

Description: Amendment to July 1, 2013 Triennial Market Power Update for the Northwest Region of the Avista Corporation, et. al.

Filed Date: 10/16/13.

Accession Number: 20131016–5174.

Comments Due: 5 p.m. ET 3/27/14.

Docket Numbers: ER10–2374–004; ER10–1533–005.

Applicants: Puget Sound Energy, Inc., Macquarie Energy LLC.

Description: Third Amendment to June 28, 2013 Triennial Updated Market Power Analysis in the Northwest Region of Puget Sound Energy, Inc., et. al.

Filed Date: 3/14/14.

Accession Number: 20140314–5179.

Comments Due: 5 p.m. ET 4/4/14.

Docket Numbers: ER14–58–002.

Applicants: The Potomac Edison Company, West Penn Power Company, Monongahela Power Company, PJM Interconnection, L.L.C.

Description: FirstEnergy and Potomac Edison Co submit compliance filing per 11/21/2013 Order to be effective 2/14/2014.

Filed Date: 3/14/14.

Accession Number: 20140314–5124.

Comments Due: 5 p.m. ET 4/4/14.

Docket Numbers: ER14–1309–000.

Applicants: Singer Energy Group, LLC.

Description: Supplement to February 11, 2014 Singer Energy Group, LLC tariff filing.

Filed Date: 3/14/14.

Accession Number: 20140314–5074.

Comments Due: 5 p.m. ET 3/24/14.

Docket Numbers: ER14–1395–001.

Applicants: Southwest Power Pool, Inc.

Description: 2852 Substitute—The Energy Authority & Westar Att AM to be effective 3/1/2014.

Filed Date: 3/18/14.

Accession Number: 20140318–5054.

Comments Due: 5 p.m. ET 4/8/14.

Docket Numbers: ER14–1461–001.

Applicants: PJM Interconnection, L.L.C.

Description: Errata to Correct OATT Att. DD Section 5.14 to be effective 5/10/2014.

Filed Date: 3/14/14.

Accession Number: 20140314–5107.

Comments Due: 5 p.m. ET 3/31/14.

Docket Numbers: ER14–1508–000.
Applicants: Public Service Company of Colorado.
Description: 2014–3–14_Rev Sch 7—Clean-up to be effective 1/1/2013.
Filed Date: 3/14/14.
Accession Number: 20140314–5117.
Comments Due: 5 p.m. ET 4/4/14.
Docket Numbers: ER14–1509–000.
Applicants: Orange and Rockland Utilities, Inc.
Description: Orange and Rockland Undergrounding Rate 3.14.14 to be effective 4/1/2014.
Filed Date: 3/14/14.
Accession Number: 20140314–5125.
Comments Due: 5 p.m. ET 4/4/14.
Docket Numbers: ER14–1510–000.
Applicants: RE Rosamond One LLC.
Description: Order No. 784 Compliance Filing to be effective 3/15/2014.
Filed Date: 3/14/14.
Accession Number: 20140314–5134.
Comments Due: 5 p.m. ET 4/4/14.
Docket Numbers: ER14–1511–000.
Applicants: RE Rosamond Two LLC.
Description: Order No. 784 Compliance Filing to be effective 3/15/2014.
Filed Date: 3/14/14.
Accession Number: 20140314–5135.
Comments Due: 5 p.m. ET 4/4/14.
Docket Numbers: ER14–1512–000.
Applicants: California Independent System Operator Corporation.
Description: 2014–03–14_IID_DTBAOA to be effective 5/15/2014.
Filed Date: 3/14/14.
Accession Number: 20140314–5145.
Comments Due: 5 p.m. ET 4/4/14.
Docket Numbers: ER14–1513–000.
Applicants: Southwest Power Pool, Inc.
Description: 2825 KMEA and Westar Energy Meter Agent Agreement to be effective 3/1/2014.
Filed Date: 3/14/14.
Accession Number: 20140314–5164.
Comments Due: 5 p.m. ET 4/4/14.
Docket Numbers: ER14–1514–000.
Applicants: Southern California Edison Company.
Description: SGIA & Distribution Service Agreement with Adelanto Greenworks A LLC to be effective 5/17/2014.
Filed Date: 3/18/14.
Accession Number: 20140317–5001.
Comments Due: 5 p.m. ET 4/8/14.
Docket Numbers: ER14–1515–000.
Applicants: Alcoa Power Generating Inc.
Description: Request for Waiver of FERC Form No. 1 and Relevant Part 141 Requirements of Alcoa Power Generating Inc.
Filed Date: 3/14/14.
Accession Number: 20140314–5185.
Comments Due: 5 p.m. ET 4/4/14.
Docket Numbers: ER14–1516–000.
Applicants: Cleco Evangeline LLC.
Description: Cancellation of Cleco Evangeline LLC MBR tariff to be effective 3/19/2014.
Filed Date: 3/18/14.
Accession Number: 20140318–5043.
Comments Due: 5 p.m. ET 4/8/14.
Docket Numbers: ER14–1517–000.
Applicants: Public Service Company of New Mexico.
Description: Cancellation of Service Schedule I and Operating Procedure 9 of the EPE GFA to be effective 6/1/2014.
Filed Date: 3/18/14.
Accession Number: 20140318–5100.
Comments Due: 5 p.m. ET 4/8/14.
Docket Numbers: ER14–1518–000.
Applicants: Public Service Company of New Mexico.
Description: Transmission service agreement between PNM and EPE to be effective 6/1/2014.
Filed Date: 3/18/14.
Accession Number: 20140318–5101.
Comments Due: 5 p.m. ET 4/8/14.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES14–28–000.
Applicants: Upper Peninsula Power Company.
Description: Application for Authorization to Issue Securities under Section 204 of the Federal Power Act of Upper Peninsula Power Company.
Filed Date: 3/14/14.
Accession Number: 20140314–5176.
Comments Due: 5 p.m. ET 4/4/14.

Take notice that the Commission received the following electric reliability filings

Docket Numbers: RD14–8–000.
Applicants: North American Electric Reliability Corporation.
Description: Petition of the North American Electric Reliability Corporation for Approval of Interpretation of Regional Reliability Standard TOP–007–WECC–1.
Filed Date: 3/12/14.
Accession Number: 20140312–5338.
Comments Due: 5 p.m. ET 4/17/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 18, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–06531 Filed 3–24–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2290–002; ER10–2187–001.
Applicants: Avista Corporation.
Description: Third Amendment to July 1, 2013 Triennial Market Power Update for the Northwest Region of the Avista Corporation, et. al.
Filed Date: 3/6/14.
Accession Number: 20140306–5020.
Comments Due: 5 p.m. ET 3/27/14.
Docket Numbers: ER13–2315–001.
Applicants: Pennsylvania Electric Company, PJM Interconnection, L.L.C.
Description: FirstEnergy Service Co and Penelec submit compliance filing per 10/22/2013 Order to be effective 2/12/2014.
Filed Date: 3/14/14.
Accession Number: 20140314–5052.
Comments Due: 5 p.m. ET 4/4/14.
Docket Numbers: ER14–59–001.
Applicants: The Potomac Edison Company, West Penn Power Company, Monongahela Power Company, PJM Interconnection, L.L.C.
Description: FirstEnergy and Potomac Edison Co submit compliance filing per 11/21/2013 Order to be effective 2/14/2014.
Filed Date: 3/14/14.
Accession Number: 20140314–5062.
Comments Due: 5 p.m. ET 4/4/14.
Docket Numbers: ER14–1485–000.
Applicants: PJM Interconnection, L.L.C.
Description: Amendments to Schedule 12—Appendix re RTEP approved by PJM Board Feb 12, 2014 to be effective 6/11/2014.
Filed Date: 3/13/14.

Accession Number: 20140313–5141.
Comments Due: 5 p.m. ET 4/3/14.

Docket Numbers: ER14–1486–000.
Applicants: Desert Sunlight 250, LLC.
Description: Desert Sunlight 250, LLC Order No. 784 Compliance Filing to be effective 7/18/2013.
Filed Date: 3/13/14.
Accession Number: 20140313–5150.
Comments Due: 5 p.m. ET 4/3/14.

Docket Numbers: ER14–1487–000.
Applicants: Desert Sunlight 300, LLC.
Description: Desert Sunlight 300, LLC Order No. 784 Compliance Filing to be effective 7/18/2013.
Filed Date: 3/13/14.
Accession Number: 20140313–5151.
Comments Due: 5 p.m. ET 4/3/14.

Docket Numbers: ER14–1488–000.
Applicants: Diablo Winds, LLC.
Description: Diablo Winds, LLC Order No. 784 Compliance Filing to be effective 7/21/2010.
Filed Date: 3/13/14.
Accession Number: 20140313–5152.
Comments Due: 5 p.m. ET 4/3/14.

Docket Numbers: ER14–1489–000.
Applicants: FPL Energy Cabazon Wind, LLC.
Description: FPL Energy Cabazon Wind, LLC Order No. 784 Compliance Filing to be effective 7/21/2010.
Filed Date: 3/13/14.
Accession Number: 20140313–5153.
Comments Due: 5 p.m. ET 4/3/14.

Docket Numbers: ER14–1490–000.
Applicants: FPL Energy Green Power Wind, LLC.
Description: FPL Energy Green Power Wind, LLC Order No. 784 Compliance Filing to be effective 7/22/2010.
Filed Date: 3/13/14.
Accession Number: 20140313–5155.
Comments Due: 5 p.m. ET 4/3/14.

Docket Numbers: ER14–1491–000.
Applicants: FPL Energy Montezuma Wind, LLC.
Description: FPL Energy Montezuma Wind, LLC Order No. 784 Compliance Filing to be effective 11/20/2010.
Filed Date: 3/13/14.
Accession Number: 20140313–5157.
Comments Due: 5 p.m. ET 4/3/14.

Docket Numbers: ER14–1492–000.
Applicants: FPL Energy New Mexico Wind, LLC.
Description: FPL Energy New Mexico Wind, LLC Order No. 784 Compliance Filing to be effective 7/22/2010.
Filed Date: 3/13/14.
Accession Number: 20140313–5158.
Comments Due: 5 p.m. ET 4/3/14.

Docket Numbers: ER14–1493–000.
Applicants: Genesis Solar, LLC.
Description: Genesis Solar, LLC Order No. 784 Compliance Filing to be effective 10/1/2013.
Filed Date: 3/13/14.
Accession Number: 20140313–5159.
Comments Due: 5 p.m. ET 4/3/14.

Docket Numbers: ER14–1494–000.
Applicants: Hatch Solar Energy Center I, LLC.
Description: Hatch Solar Energy Center I, LLC Order No. 784 Compliance Filing to be effective 5/26/2011.
Filed Date: 3/13/14.
Accession Number: 20140313–5160.
Comments Due: 5 p.m. ET 4/3/14.

Docket Numbers: ER14–1495–000.
Applicants: High Winds, LLC.
Description: High Winds, LLC Order No. 784 Compliance Filing to be effective 7/26/2010.
Filed Date: 3/13/14.
Accession Number: 20140313–5161.
Comments Due: 5 p.m. ET 4/3/14.

Docket Numbers: ER14–1496–000.
Applicants: Mountain View Solar, LLC.
Description: Mountain View Solar, LLC Order No. 784 Compliance Filing to be effective 11/1/2013.
Filed Date: 3/13/14.
Accession Number: 20140313–5162.
Comments Due: 5 p.m. ET 4/3/14.

Docket Numbers: ER14–1497–000.
Applicants: NextEra Energy Montezuma II Wind, LLC.
Description: NextEra Energy Montezuma II Wind, LLC Order No. 784 Compliance Filing to be effective 11/2/2011.
Filed Date: 3/13/14.
Accession Number: 20140313–5163.
Comments Due: 5 p.m. ET 4/3/14.

Docket Numbers: ER14–1498–000.
Applicants: North Sky River Energy, LLC.
Description: North Sky River Energy, LLC Order No. 784 Compliance Filing to be effective 10/13/2012.
Filed Date: 3/13/14.
Accession Number: 20140313–5164.
Comments Due: 5 p.m. ET 4/3/14.

Docket Numbers: ER14–1499–000.
Applicants: Perrin Ranch Wind, LLC.
Description: Perrin Ranch Wind, LLC Order No. 784 Compliance Filing to be effective 1/1/2012.
Filed Date: 3/13/14.
Accession Number: 20140313–5165.
Comments Due: 5 p.m. ET 4/3/14.

Docket Numbers: ER14–1500–000.
Applicants: Red Mesa Wind, LLC.
Description: Red Mesa Wind, LLC Order No. 784 Compliance Filing to be effective 11/25/2010.
Filed Date: 3/13/14.
Accession Number: 20140313–5166.
Comments Due: 5 p.m. ET 4/3/14.

Docket Numbers: ER14–1501–000.
Applicants: Sky River LLC.
Description: Sky River LLC Order No. 784 Compliance Filing to be effective 7/27/2010.
Filed Date: 3/13/14.
Accession Number: 20140313–5167.
Comments Due: 5 p.m. ET 4/3/14.

Docket Numbers: ER14–1502–000.
Applicants: Vasco Winds, LLC.
Description: Vasco Winds, LLC Order No. 784 Compliance Filing to be effective 11/1/2011.
Filed Date: 3/13/14.
Accession Number: 20140313–5168.
Comments Due: 5 p.m. ET 4/3/14.

Docket Numbers: ER14–1503–000.
Applicants: Windpower Partners 1993, LLC.
Description: Windpower Partners 1993, LLC Order No. 784 Compliance Filing to be effective 12/8/2011.
Filed Date: 3/13/14.
Accession Number: 20140313–5169.
Comments Due: 5 p.m. ET 4/3/14.

Docket Numbers: ER14–1504–000.
Applicants: NextEra Energy Power Marketing, LLC.
Description: NextEra Energy Power Marketing, LLC Order No. 784 Compliance Filing to be effective 7/26/2010.
Filed Date: 3/13/14.
Accession Number: 20140313–5170.
Comments Due: 5 p.m. ET 4/3/14.

Docket Numbers: ER14–1505–000.
Applicants: Employers' Energy Alliance of Pennsylvania, Inc.
Description: Notice of Cancellation to be effective 5/13/2014.
Filed Date: 3/14/14.
Accession Number: 20140314–5041.
Comments Due: 5 p.m. ET 4/4/14.

Docket Numbers: ER14–1506–000.
Applicants: New York Independent System Operator, Inc.
Description: 205 Filing to clarify OATT & MST price correction tariff provisions to be effective 5/13/2014.
Filed Date: 3/14/14.
Accession Number: 20140314–5063.
Comments Due: 5 p.m. ET 4/4/14.

Docket Numbers: ER14–1507–000.
Applicants: PacifiCorp.
Description: OATT Attachment N Errata to be effective 11/15/2013.
Filed Date: 3/14/14.
Accession Number: 20140314–5093.
Comments Due: 5 p.m. ET 4/4/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 14, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–06414 Filed 3–24–14; 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: PR14–31–000
Applicants: MDU Resources Group, Inc.
Description: Tariff filing per 284.123(b)(1), : Baseline Statement of Operating Conditions to be effective 3/7/2014; TOFC: 1330
Filed Date: 3/7/14
Accession Number: 20140307–5103
Comments Due: 5 p.m. ET 3/28/14
284.123(g) Protests Due: 5 p.m. ET 5/6/14

Docket Numbers: RP14–620–000
Applicants: Tallgrass Interstate Gas Transmission, L
Description: Petition for Limited Waiver of Tariff Provisions of Tallgrass Interstate Gas Transmission, LLC.
Filed Date: 3/13/14
Accession Number: 20140313–5184
Comments Due: 5 p.m. ET 3/25/14

Docket Numbers: RP14–621–000
Applicants: Horizon Pipeline Company, L.L.C.
Description: Penalty Revenue Crediting Report of Horizon Pipeline Company, L.L.C.
Filed Date: 3/13/14
Accession Number: 20140313–5185
Comments Due: 5 p.m. ET 3/25/14

Docket Numbers: RP14–622–000
Applicants: Iroquois Gas Transmission System, L.P.
Description: 03/14/14 Negotiated Rates—JP Morgan Ventures Energy Corp (HUB) 6025–89 to be effective 3/13/2014
Filed Date: 3/14/14
Accession Number: 20140314–5042
Comments Due: 5 p.m. ET 3/26/14

Docket Numbers: RP14–623–000
Applicants: Transcontinental Gas Pipe Line Company,
Description: Transcontinental Gas Pipe Line Company, LLC submits a Petition for Limited Waiver of the application of the No-Conduit Rule
Filed Date: 3/14/14
Accession Number: 20140314–5079
Comments Due: 5 p.m. ET 3/26/14

Docket Numbers: RP14–624–000
Applicants: Columbia Gas Transmission, LLC
Description: Negotiated Rate & Non-Conforming Service Agreement—VEPCO to be effective 4/15/2014
Filed Date: 3/14/14
Accession Number: 20140314–5084
Comments Due: 5 p.m. ET 3/26/14

Docket Numbers: RP14–625–000
Applicants: Transcontinental Gas Pipe Line Company,
Description: Abandonment of Rate Schedule X–275 to be effective 11/1/2013
Filed Date: 3/14/14
Accession Number: 20140314–5106
Comments Due: 5 p.m. ET 3/26/14

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: RP13–459–000
Applicants: Trailblazer Pipeline Company LLC
Description: 2013 Penalty Revenue Crediting Report
Filed Date: 3/14/14
Accession Number: 20140314–5076
Comments Due: 5 p.m. ET 3/26/14

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: March 18, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–06417 Filed 3–24–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2984–011.
Applicants: Merrill Lynch Commodities, Inc.
Description: Supplement to June 21, 2013 Updated Market Power Analysis for the Southwest Region of Merrill Lynch Commodities, Inc.
Filed Date: 3/18/14.
Accession Number: 20140318–5145.
Comments Due: 5 p.m. ET 4/1/14.

Docket Numbers: ER13–2318–001*; ER13–1430–002; ER10–2743–003; ER12–637–001; ER13–1561–002; ER12–995–001; ER10–2793–003; ER10–1854–003; ER13–2317–001; ER10–2755–003; ER10–2739–006; ER11–27–004; ER11–3320–003; ER13–2319–001; ER10–2751–003; ER10–2744–004; ER10–2740–004; ER13–2316–001; ER10–2742–003; ER10–1631–003; ER11–3321–003; ER14–19–001.*
Applicants: All Dams Generation, LLC, Arlington Valley Solar Energy II, LLC, Bluegrass Generation Company, L.L.C., Calhoun Power Company, LLC, Cherokee County Cogeneration Partners, LLC, DeSoto County Generating Company, LLC, Doswell Limited Partnership, Lake Lynn Generation, LLC, Las Vegas Power Company, LLC, LS Power Marketing, LLC, LSP Safe Harbor Holdings, LLC, LSP University Park, LLC, PE Hydro Generation, LLC, Renaissance Power, L.L.C, Riverside Generating Company, L.L.C., Rocky Road Power, LLC, Seneca Generation, LLC, Tilton Energy, LLC, University Park Energy, LLC, Wallingford Energy LLC, West Deptford Energy, LLC, Centinela Solar Energy, LLC.
Description: Notification of Change in Status of the LS Power Development, LLC subsidiaries.
Filed Date: 3/14/14.
Accession Number: 20140314–5195.
Comments Due: 5 p.m. ET 4/4/14.

Docket Numbers: ER14–1363–002.
Applicants: Kendall Green Energy LLC.
Description: Kendall Green Market Based Rate Tariff Revision to be effective 1/31/2014.
Filed Date: 3/18/14.
Accession Number: 20140318–5151.
Comments Due: 5 p.m. ET 4/8/14.

Docket Numbers: ER14–1373–002.
Applicants: Energy Utility Group, LLC.
Description: 2nd Amended MBR Tariff Filing to be effective 3/31/2014.

Filed Date: 3/18/14.

Accession Number: 20140318–5131.

Comments Due: 5 p.m. ET 4/8/14.

Docket Numbers: ER14–1519–000.

Applicants: Edison Mission Marketing & Trading, Inc.

Description: Edison Mission Marketing & Trading, LLC Notice of Succession to be effective 2/20/2014.

Filed Date: 3/18/14.

Accession Number: 20140318–5122.

Comments Due: 5 p.m. ET 4/8/14.

Docket Numbers: ER14–1520–000.

Applicants: Shell Energy North America (US), L.P.

Description: Second Rev MBR & CIS to be effective 3/19/2014.

Filed Date: 3/18/14.

Accession Number: 20140318–5130.

Comments Due: 5 p.m. ET 4/8/14.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–28–007.

Applicants: Avista Corporation.

Description: Avista Corporation's Informational Filing of Operational Penalty Assessments and Distributions as Required by Order Nos. 890 and 890–A in OA07–28.

Filed Date: 3/18/14.

Accession Number: 20140318–5153.

Comments Due: 5 p.m. ET 4/8/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pd*f. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 18, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–06532 Filed 3–24–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9908–76–OA]

Notification of a Public Teleconference and Meeting of the Science Advisory Board Chemical Assessment Advisory Committee Augmented for the Review of EPA's Draft Trimethylbenzenes Assessment

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces two meetings of the Chemical Assessment Advisory Committee Augmented for the Review of the Draft Trimethylbenzenes Assessment (CAAC–TMB Panel). A public teleconference will be held to discuss the charge questions, to learn about the development of the agency's draft Integrated Risk Information System (IRIS) *Toxicological Review of Trimethylbenzenes* (August 2013 Revised External Review Draft), and to learn about the Health and Environment Research Online (HERO) database prior to a face-to-face meeting that will be held in Arlington, VA. The purpose of the face-to-face meeting is to receive a briefing on the EPA's enhancements to the IRIS Program, including the process for developing IRIS assessments, and to conduct a peer review of the Agency's draft IRIS *Toxicological Review of Trimethylbenzenes* (August 2013 Revised External Review Draft).

DATES: The public teleconference will be held on May 22, 2014, from 1:00 p.m. to 5:00 p.m. (Eastern Time). The public face-to-face meeting will be held on June 17–June 19, 2014. A briefing on the EPA's enhancements to the IRIS Program will be held on June 17, 2014 from 9:00 a.m. to 12:00 p.m. The peer review of the Agency's draft IRIS *Toxicological Review of Trimethylbenzenes* (August 2013 Revised External Review Draft) will commence on June 17, 2014 from 1:15 p.m. to 5:30 p.m. (Eastern Time). The peer review will continue on June 18–19, 2014, from 8:30 a.m. to 5:00 p.m. (Eastern Time).

ADDRESSES: The public teleconference will be conducted by telephone. The public face-to-face meetings will be held at the Crowne Plaza Washington National Airport, 1480 Crystal Drive, Arlington, VA, 22202.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning these public meetings may contact Mr. Thomas Carpenter, Designated Federal Officer (DFO) for the CAAC TMB Panel, by telephone or at (202) 564–4885 or via email at *carpenter.thomas@epa.gov.* General information concerning the EPA SAB can be found at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the SAB CAAC TMB Panel will hold a public teleconference and public face-to-face meeting. The purpose of the teleconference is to discuss the charge questions, to learn about the development of the agency's draft IRIS *Toxicological Review of Trimethylbenzenes* (August 2013 Revised External Review Draft) and learn about the Health and Environment Research Online (HERO) database. The purposes of the face-to-face meeting are to receive a briefing on the EPA's enhancements to the IRIS Program, including the process for developing IRIS assessments, and to conduct a peer review of the EPA's draft IRIS assessment of trimethylbenzenes. This SAB panel will provide advice to the Administrator through the chartered SAB.

Background: EPA's Office of Research and Development requested that the SAB conduct a peer review of the draft IRIS *Toxicological Review of Trimethylbenzenes* (August 2013 Revised External Review Draft). The EPA SAB Staff Office augmented the SAB CAAC with subject matter experts to provide advice through the chartered SAB regarding this IRIS assessment. The SAB CAAC–TMB Review Panel was scheduled to meet on February 18–20, 2014 to conduct a peer review of the draft IRIS assessment of trimethylbenzenes (79 **Federal Register** 5400–5402). To allow more time for the public to prepare for the meeting, the agency asked the SAB to reschedule its February meeting. Additional information about this advisory activity, including, the formation of the SAB CAAC–TMB Review Panel, can be found at the following URL: *http://yosemite.epa.gov/sab/sabproduct.nsf/*

fedrgstr_activites/IRIS%20Trimethyl benzenes?OpenDocument

A meeting agenda and other meeting materials will be posted at the above noted URL prior to the meeting.

Technical Contacts: Any technical questions concerning EPA's draft IRIS assessment of trimethylbenzenes should be directed to Dr. Samantha Jones by telephone at 703–347–8580 or by email at *jones.samantha@epa.gov.*

Availability of Meeting Materials: Prior to the meeting, the review documents, agenda and other materials will be accessible through the calendar link on the blue navigation bar at *http://www.epa.gov/sab/.* Materials may also be accessed at the following SAB Web page *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/IRIS%20Trimethylbenzenes?OpenDocument.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Interested members of the public may submit relevant information on the topic of this advisory activity, and/or the group conducting the activity, for the SAB to consider during the advisory process. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for SAB committees and panels to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the DFO directly. *Oral Statements:* In general, individuals or groups requesting an oral presentation on the teleconference will be limited to three minutes and oral presentation at the face-to-face meeting will be limited to five minutes. Interested parties wishing to provide comments should contact Mr. Thomas Carpenter (preferably via email) at the contact information noted above by May 13, 2014 to be placed on the list of public speakers for the teleconference and by June 9, 2014 to be placed on the list of public speakers for the face-to-face meeting. *Written Statements:* Written statements will be accepted throughout the advisory process; however, for timely consideration by Committee/Panel members, statements should be supplied to the DFO via email at the contact information noted above at least one week prior to a public meeting. Written statements should be supplied in one of the following electronic formats: Adobe Acrobat PDF, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format. It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Thomas Carpenter at (202) 564–4885 or *carpenter.thomas@epa.gov.* To request accommodation of a disability, please contact Mr. Carpenter preferably at least ten days prior to the meeting to give EPA as much time as possible to process your request.

Dated: March 18, 2014.

Thomas H. Brennan,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2014–06551 Filed 3–24–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9908–75–OA]

Notification of a Public Teleconference of the Clean Air Scientific Advisory Committee Augmented for the Sulfur Oxides Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public teleconference of the Clean Air Scientific Advisory Committee (CASAC) Augmented for the Sulfur Oxides Review to review the EPA's *Integrated Review Plan for the Primary National Ambient Air Quality Standard for Sulfur Dioxide (External Review Draft—March 2014).*

DATES: The CASAC Augmented for the Sulfur Oxides Review will hold a public teleconference on Tuesday, April 22, 2014, from 1:00 p.m. to 5:00 p.m. (Eastern Time).

ADDRESSES: The CASAC public teleconference will take place via telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the CASAC's public teleconference may contact Dr. Diana Wong, Designated Federal Officer (DFO) via telephone at (202) 564–2049 or email at *wong.diana-M@epa.gov.* General information concerning the CASAC can be found on the EPA Web site at *http://www.epa.gov/casac.*

SUPPLEMENTARY INFORMATION: The CASAC was established pursuant to the Clean Air Act (CAA) Amendments of 1977, codified at 42 U.S.C. 7409D(d)(2), to review air quality criteria and NAAQS and recommend any new NAAQS and revisions of existing criteria and NAAQS as may be appropriate. The CASAC shall also provide advice, information, and recommendations to the Administrator on the scientific and technical aspects of issues related to the criteria for air quality standards, research related to air quality, sources of air pollution, and of adverse effects which may result from various strategies to attain and maintain air quality standards . The CASAC is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the NAAQS for the six ''criteria'' air pollutants, including oxides of sulfur. EPA is currently reviewing the primary (health-based) NAAQS for sulfur dioxide (SO_2), as an indicator for health effects caused by the presence of oxides of sulfur in the ambient air.

For purposes of the review of the sulfur oxides air quality criteria for health and the primary NAAQS for sulfur dioxide, the CASAC Augmented for the Sulfur Oxides Review was formed following a request for public nominations of experts (78 FR 43880—43881, July 22, 2013). Pursuant to FACA and EPA policy, notice is hereby given that the CASAC Augmented for the Sulfur Oxides Review will hold a public teleconference to peer review EPA's *Integrated Review Plan for the Primary National Ambient Air Quality Standard for Sulfur Dioxide (External Review Draft—March, 2014).* The CASAC and the CASAC Augmented for the Sulfur Oxides Review will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Technical Contacts: Any technical questions concerning the *Integrated Review Plan for the Primary National Ambient Air Quality Standard for Sulfur*

Dioxide (External Review Draft—March 2014) should be directed to Dr. Michael Stewart (*stewart.michael@epa.gov*).

Availability of Meeting Materials: Prior to the teleconference, EPA's *Integrated Review Plan for the Primary National Ambient Air Quality Standard for Sulfur Dioxide (External Review Draft—March 2014),* the agenda and other materials will be accessible through the calendar link on the blue navigation bar at *http://www.epa.gov/casac/.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit relevant comments for a federal advisory committee to consider pertaining to EPA's charge to the panel or meeting materials. Input from the public to the CASAC will have the most impact if it provides specific scientific or technical information or analysis for CASAC panels to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the DFO directly. *Oral Statements:* In general, individuals or groups requesting an oral presentation will be limited to three minutes for public teleconferences. Interested parties should contact Dr. Diana Wong, DFO, in writing (preferably via email) at the contact information noted above by April 14, 2014 to be placed on the list of public speakers for the public teleconference. *Written Statements:* Written statements should be supplied to Dr. Diana Wong, DFO, via email at the contact information noted above by April 14, 2014 for the public teleconference. Written statements should be supplied in one of the following electronic formats: Adobe Acrobat PDF, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format. It is the SAB Staff Office general policy to post written comments on the Web page for advisory meetings or teleconferences. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the CASAC Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Diana Wong at (202) 564–2049 or *wong.diana-M@epa.gov.* To request accommodation of a disability, please contact Dr. Diana Wong preferably at least ten days prior to the teleconference to give EPA as much time as possible to process your request.

Dated: March 14, 2014.

Christopher Carbo,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2014–06550 Filed 3–24–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9908–74–OA]

EPA Science Advisory Board; Notification of a Public Teleconference and Meeting of the Science Advisory Board Chemical Assessment Advisory Committee Augmented for the Review of EPA's Draft Ammonia Assessment

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces two meetings of the Chemical Assessment Advisory Committee Augmented for the Review of the Draft Ammonia Assessment (CAAC-Ammonia Panel). A public teleconference will be held to discuss the charge questions, to learn about the development of the agency's draft Integrated Risk Information System (IRIS) *Toxicological Review of Ammonia* (August 2013 Revised External Review Draft), and to learn about the Health and Environment Research Online (HERO) database prior to a face-to-face meeting that will be held in Arlington, VA. The purpose of the face-to-face meeting is to receive a briefing on the EPA's enhancements to the IRIS Program, including the process for developing IRIS assessments, and to conduct a peer review of the Agency's draft IRIS *Toxicological Review of Ammonia* (August 2013 Revised External Review Draft).

DATES: The public teleconference will be held on June 4, 2014, from 1:00 p.m. to 5:00 p.m. (Eastern Time). The public face-to-face meeting will be held on July 14—July 16, 2014. A briefing on the EPA's enhancements to the IRIS Program will be held on July 14, 2014 from 9:00 a.m. to 12:00 p.m. The peer review of the Agency's draft IRIS *Toxicological Review of Ammonia* (August 2013 Revised External Review Draft) will commence on July 14, 2014 from 1:15 p.m. to 5:30 p.m. (Eastern Time). The peer review will continue on July 15–16, 2014, from 8:30 a.m. to 5:30 p.m. (Eastern Time).

ADDRESSES: The public teleconference will be conducted by telephone only. The public face-to-face meeting will be held at the Crowne Plaza Washington National Airport, 1480 Crystal Drive, Arlington, VA, 22202.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning these public meetings may contact Dr. Sue Shallal, Designated Federal Officer (DFO) for the CAAC-Ammonia Panel, by telephone at (202) 564–2057 or via email at *shallal.suhair@epa.gov.* General information concerning the EPA SAB can be found at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the SAB CAAC-Ammonia Panel will hold a public teleconference and public face-to-face meeting. The purpose of the teleconference is to discuss the charge questions, to learn about the development of the agency's draft IRIS *Toxicological Review of Ammonia* (August 2013 Revised External Review Draft) and learn about the EPA's Health and Environmental Research Online (HERO) database. The purposes of the face-to-face meeting are to receive a briefing on the EPA's enhancements to the IRIS Program, including the process for developing IRIS assessments, and to conduct a peer review of the EPA's draft IRIS assessment of ammonia. This SAB panel will provide advice to the Administrator through the chartered SAB.

Background: EPA's Office of Research and Development requested that the SAB conduct a peer review of the draft IRIS *Toxicological Review of Ammonia*

(August 2013 Revised External Review Draft). The EPA SAB Staff Office augmented the SAB CAAC with subject matter experts to provide advice through the chartered SAB regarding this IRIS assessment. The SAB CAAC-Ammonia Review Panel was scheduled to meet on February 18–20, 2014 to conduct a peer review of the draft IRIS assessment of ammonia (79 **Federal Register** 5400–5402). To allow more time for the public to prepare for the meeting, the agency asked the SAB to reschedule its February meeting. Additional information about this advisory activity, including, the formation of the SAB CAAC-Ammonia Review Panel, can be found at the following URL: *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/IRIS%20Ammonia?OpenDocument.*

A meeting agenda and other meeting materials will be posted at the above noted URL prior to the meeting.

Technical Contacts: Any technical questions concerning EPA's draft IRIS assessment of ammonia should be directed to Dr. Samantha Jones by telephone at 703–347–8580 or by email at *jones.samantha@epa.gov.*

Availability of Meeting Materials: Prior to the meeting, the review documents, agenda and other materials will be accessible through the calendar link on the blue navigation bar at *http://www.epa.gov/sab/.* Materials may also be accessed at the following SAB Web page *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/IRIS%20Ammonia?OpenDocument.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Interested members of the public may submit relevant information on the topic of this advisory activity, and/or the group conducting the activity, for the SAB to consider during the advisory process. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for SAB committees and panels to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the DFO directly. *Oral Statements:* In general, individuals or groups requesting an oral presentation on the teleconference will be limited to three minutes and oral presentations at the face-to-face meeting will be limited to five minutes. Interested parties wishing to provide comments should contact Dr. Sue Shallal, DFO, in writing (preferably via email) at the contact information noted above by May 27, 2014 to be placed on the list of public speakers for the teleconference and by July 7, 2014 to be placed on the list of public speakers for the face-to-face meeting.

Written Statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by Committee/Panel members, statements should be supplied to the DFO via email at the contact information noted above at least one week prior to a public meeting. Written statements should be supplied in one of the following electronic formats: Adobe Acrobat PDF, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format. It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Sue Shallal at (202) 564–2057 or *shallal.suhair@epa.gov.* To request accommodation of a disability, please contact Dr. Shallal preferably at least ten days prior to the meeting to give EPA as much time as possible to process your request.

Dated: March 18, 2014.

Thomas H. Brennan,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2014–06548 Filed 3–24–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communication Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before April 24, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*. Include in the comments the OMB control number as shown in the ''Supplementary Information'' section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the

''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0674.

Title: Section 76.1618, Basic Tier Availability.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 8,250 respondents; 8,250 responses.

Estimated Time per Response: 2.25 hour.

Frequency of Response: Third party disclosure requirement; On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 4(i) and 632 of the Communications Act of 1934, as amended.

Total Annual Burden: 18,563 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: 47 CFR 76.1618 states that a cable operator shall provide written notification to subscribers of the availability of basic tier service to new subscribers at the time of installation. This notification shall include the following information: (a) That basic tier service is available; (b) the cost per month for basic tier service; and (c) a list of all services included in the basic service tier. These notification requirements are to ensure the subscribers are made aware of the availability of basic cable service at the time of installation.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2014–06486 Filed 3–24–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Advisory Committee on Community Banking; Notice of Meeting

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of Open Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the FDIC Advisory Committee on Community Banking, which will be held in Washington, DC. The Advisory Committee will provide advice and recommendations on a broad range of policy issues that have particular impact on small community banks throughout the United States and the local communities they serve, with a focus on rural areas.

DATES: Wednesday, April 9, 2014, from 8:45 a.m. to 3:30 p.m.

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

FOR FURTHER INFORMATION CONTACT: Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898–7043.

SUPPLEMENTARY INFORMATION:

Agenda: The agenda will include a discussion of current issues affecting community banking. The agenda is subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

Type of Meeting: The meeting will be open to the public, limited only by the space available on a first-come, first-served basis. For security reasons, members of the public will be subject to security screening procedures and must present a valid photo identification to enter the building. The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY) at least two days before the meeting to make necessary arrangements. Written statements may be filed with the committee before or after the meeting. This Community Banking Advisory Committee meeting will be Webcast live via the Internet at *https://fdic.primetime.mediaplatform.com/#/channel/1384299242770/Advisory+Committee+on+Community+Banking+*. Questions or troubleshooting help can be found at the same link. For optimal viewing, a high speed internet connection is recommended. The Community Banking meeting videos are made available on-demand approximately two weeks after the event.

Dated: March 20, 2014.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Committee Management Officer.

[FR Doc. 2014–06473 Filed 3–24–14; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Availability of Service Contract Inventories

AGENCY: Federal Maritime Commission.

ACTION: Notice of Availability of Service Contract Inventories.

FOR FURTHER INFORMATION CONTACT: Karen V. Gregory, Secretary at 202–523–5725, or *secretary@fmc.gov*.

In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), the Federal Maritime Commission is publishing this notice to advise the public of the availability of the FY 2011 Service Contract Inventory Analysis, the FY 2013 Service Contract Inventory, and the FY 2013 Service Contract Inventory Planned Analysis. The FY 2011 inventory analysis provides information on specific service contract actions that were analyzed as part of the FY 2011 inventory. The FY 2013 inventory provides information on service contract actions over $25,000 that were made in FY 2013. The inventory information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.* The FY 2012 inventory planned analysis provides information on which functional areas will be reviewed by the agency. The Federal Maritime Commission has posted its FY 2013 inventory, FY 2013 inventory analysis at the following link: *http://www.fmc.gov/bureaus_offices/office_of_management_services.aspx*.

Authority: Sec. 743, Pub. L. 111–117.

Karen V. Gregory,

Secretary.

[FR Doc. 2014–06478 Filed 3–24–14; 8:45 am]

BILLING CODE 6730–01–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 April 22, 2014.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *HYS Investments, LLC,* Topeka, Kansas; to become a bank holding company by acquiring 24.76 percent of the voting shares of BOTS, Inc., and thereby acquire shares of VisionBank, both in Topeka, Kansas.

Board of Governors of the Federal Reserve System, March 20, 2014.

Michael J. Lewandowski,

Assistant Secretary of the Board.

[FR Doc. 2014–06496 Filed 3–24–14; 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 April 21, 2014.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02210–2204:

1. *Hyde Park Bancorp MHC,* Hyde Park, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Blue Hills Bank, Hyde Park, Massachusetts.

2. *Melrose Bancorp, Inc.,* Melrose, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Melrose Cooperative Bank, Melrose, Massachusetts.

3. *Pilgrim Bancshares, Inc.,* Cohassett, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Pilgrim Bank, Cohasset, Massachusetts.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Sundance State Bank Profit Sharing and Employee Stock Ownership Plan and Trust,* Sundance, Wyoming; to acquire an additional 5.34 percent, for a total of 32.07 percent, of the voting shares of Sundance Bankshares, Inc., and thereby indirectly acquire additional voting shares of Sundance State Bank, both in Sundance, Wyoming.

Board of Governors of the Federal Reserve System, March 19, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–06435 Filed 3–24–14; 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 the Home Owners' Loan Act (HOLA) (12 U.S.C. 1461 *et seq.*) and Regulation LL (12 CFR Part 238) or Regulation MM (12 CFR part 239) 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 described in § 238.53 or 238.54 of Regulation LL (12 CFR 238.53 or 238.54) or § 239.8 of Regulation MM (12 CFR 239.8). 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 10a(c)(4)(B) of HOLA (12. U.S.C. 1467a(c)(4)(B)).

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 April 10, 2014.

A. Federal Reserve Bank of Philadelphia (William Lang, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. *Pathfinder Bancorp, MHC and Pathfinder Bancorp, Inc.,* both in Oswego, New York; to retain a voting shares of FitzGibbons Agency, LLC, and thereby engage in insurance activities through its subsidiary, Pathfinder Risk Management, Inc., Oswego, New York, pursuant to section 239.8(a) of Regulation MM.

Board of Governors of the Federal Reserve System, March 19, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–06437 Filed 3–24–14; 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; Correction

This notice corrects a notice (FR Doc. 2014–06073) published on page 15343 of the issue for Wednesday, March 19, 2014.

Under the Federal Reserve Bank of Minneapolis heading, the entry for *Gapstow Capital Partners, L.P.; CJA Private Equity Financial Restructuring Master Fund I, L.P.; CJA Private Equity Financial Restructuring Fund I, Ltd., and its investors; CJA Private Equity Financial Restructuring GP I, Ltd.; Christopher J. Acito & Associates GP, LLC; Christopher J. Acito; and Jack T. Thompson;* all of New York, New York; and Timothy S.F. Jackson, Newtown, Connecticut is revised to read as follows:

A. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *Gapstow Capital Partners, L.P.; Gapstow Financial Growth Capital GP I LLC; Gapstow Financial Growth Capital Fund I LP; CJA Private Equity Financial Restructuring Master Fund I, L.P.; CJA Private Equity Financial Restructuring Fund I, Ltd., CJA Private Equity Financial Restructuring GP I, Ltd.; Christopher J. Acito & Associates GP, LLC; Christopher J. Acito; and Jack T. Thompson; all of New York, New York; and Timothy S.F. Jackson,* Newtown, Connecticut; to acquire voting shares of Golden Pacific Bancorp, Sacramento, California, and thereby indirectly acquire control of Golden Pacific Bank, N.A., Marysville, California.

Comments on this application must be received by April 3, 2014.

Board of Governors of the Federal Reserve System, March 19, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–06436 Filed 3–24–14; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities;Proposed Collection; Comment Request

AGENCY: Federal Trade Commission (''Commission'' or ''FTC'').

ACTION: Notice and request for public comment.

SUMMARY: The FTC plans to conduct a study to examine consumer perception of environmental marketing claims. This is the first of two notices required under the Paperwork Reduction Act (''PRA'') in which the FTC seeks public comments on its proposed research before requesting Office of Management and Budget (''OMB'') review of, and clearance for, the collection of information discussed herein.

DATES: Comments must be received on or before May 27, 2014.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Green Marketing Consumer Perception Study, Project No. P954501'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/organicstudypra,* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Laura Koss, Attorney, 202–326–2890, or Hampton Newsome, Attorney, 202–326–2889, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission's Guides for the Use of Environmental Marketing Claims (''Green Guides'' or ''Guides'') (16 CFR part 260) help marketers avoid making unfair and deceptive environmental claims.[1] The Guides outline general principles that apply to all environmental marketing claims and provide guidance regarding specific categories of such claims.[2] These categories include: General environmental benefit claims such as ''environmentally friendly''; degradable claims; compostable claims; recyclable claims; recycled content claims; source reduction claims; refillable claims; and ''free-of'' claims. The Green Guides explain how reasonable consumers are likely to interpret claims within these categories. The Guides also describe the basic elements necessary to substantiate claims and present options for qualifying them to avoid deception.[3] The illustrative qualifications provide ''safe harbors'' for marketers who want certainty, but do not represent the only permissible approaches. The Guides do not provide specific guidance regarding ''organic'' claims.

II. The FTC's Proposed Study

A. Study Description

The FTC plans to conduct Internet-based consumer research to explore consumer perceptions of certain environmental marketing claims, such as ''organic'' and ''pre-consumer recycled content,'' to enhance the Commission's understanding of how consumers interpret such claims. The proposed study will compare participant responses regarding the meaning of such environmental marketing claims across different product variations. Specifically, using a treatment-effect methodology, the study will examine whether respondents viewing organic and recycled content claims believe that these products have particular environmental benefits or attributes depending on the context in which they are presented. For ''recycled content'' claims, the study will present questions about products produced with materials sourced under different scenarios and compare participant responses to those scenarios. Such materials described in the questions may come from products recycled by consumers or may derive from scraps that are left over from manufacturing other products and reprocessed to varying degrees. The study will also

[1] The Commission issued the Green Guides in 1992 (57 FR 36363) and subsequently revised them in 1996 (61 FR 53311), 1998 (63 FR 24240), and 2012 (77FR 62121).

[2] 15 U.S.C. 45(a). The Commission's industry guides, such as the Green Guides, are administrative interpretations of the application of Section 5 of the FTC Act, 15 U.S.C. 45(a) to advertising claims. The Commission issues industry guides to provide guidance for the public to conform with legal requirements. These guides provide the basis for voluntary abandonment of unlawful practices by industry members. 16 CFR part 17. The Guides do not have the force and effect of law and are not independently enforceable. However, the Commission can take action under the FTC Act if a business makes environmental marketing claims inconsistent with the Guides. In any such enforcement action, the Commission must prove that the act or practice at issue is unfair or deceptive.

[3] The Guides do not, however, establish standards for environmental performance or prescribe testing protocols.

examine how respondents understand the term ''organic'' in a variety of contexts. The FTC staff will use the study results, along with other information such as public comments, in considering whether to recommend that the Commission propose revisions to the Green Guides.

Having considered the costs and benefits of various data collection methods, the FTC staff has concluded that an Internet panel with nationwide coverage will provide the most efficient way to collect data to meet the research objectives within a feasible budget. Thus, the FTC proposes to collect responses from a broad spectrum of the U.S. adult population. Participants will be drawn from an Internet panel maintained by a commercial firm that operates the panel. All participation will be voluntary. While the results will not be generalizable to the U.S. population, the Commission believes that they will provide useful insights into consumer understanding of the claims being considered.

B. PRA Burden Analysis

Staff estimates that respondents will require, on average, 20 minutes to complete the questionnaire. Staff will pretest the questionnaire with approximately 100 respondents to ensure that all questions are easily understood. Allowing for an extra three minutes for questions unique to the pretest, the pretest will total approximately 38 hours, cumulatively (100 respondents × 23 minutes each). Once the pretest is completed, the FTC plans to seek information from up to 8,000 respondents for approximately 20 minutes each. Thus, respondents will cumulatively take approximately 2,700 hours. The cost per respondent should be negligible. Participation will not require start up, capital, or labor expenditures.

III. Request for Comment

Under the PRA, 44 U.S.C. 3501–3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party.[4] As required by Section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the regulations noted herein.

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) Whether the reporting requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before May 27, 2014. Write ''Green Marketing Consumer Perception Study, Project No. P954501'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is . . . privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[5] Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/organicstudypra,* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Green Marketing Consumer Perception Study, Project No. P954501'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before May 27, 2014. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2014–06448 Filed 3–24–14; 8:45 am]

BILLING CODE 6750–01–P

[4] 44 U.S.C. 3502(3); 5 CFR 1320.3(c).

[5] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0292; Docket No. 2013–0001; Sequence 12]

Submission for OMB Review; OMB Control No. 3090–0292; FFATA Subaward and Executive Compensation Reporting Requirements

AGENCY: Office of the Integrated Award Environment, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB information collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of the currently approved information collection requirement regarding FFATA Subaward and Executive Compensation Reporting Requirements.

DATES: Submit comments on or before April 24, 2014.

ADDRESSES: Submit comments identified by Information Collection 3090–0292, FFATA Subaward and Executive Compensation Reporting Requirements by any of the following methods:

- Regulations.gov: *http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching the OMB control number 3090–0292. Select the link ''Comment Now'' that corresponds with ''Information Collection 3090–0292, FFATA Subaward and Executive Compensation Reporting Requirements''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 3090–0292, FFATA Subaward and Executive Compensation Reporting Requirements'' on your attached document.

- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: IC 3090–0292.

Instructions: Please submit comments only and cite Information Collection 3090–0292, FFATA Subaward and Executive Compensation Reporting Requirements, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Berry, Program Analyst, Office of the Integrated Award Environment, GSA, at telephone number 703–605–2984; or via email at *stephen.berry@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Funding Accountability and Transparency Act (Pub. L. 109–282, as amended by section 6202(a) of Pub. L. 110–252), known as FFATA or the Transparency Act requires information disclosure of entities receiving Federal financial assistance through Federal awards such as Federal contracts, sub-contracts, grants and sub-grants, FFATA 2(a), (2), (i), (ii). Beginning October 1, 2010, the currently approved Paperwork Reduction Act submission directed compliance with the Transparency Act to report prime and first-tier sub-award data. Specifically, Federal agencies and prime awardees of grants were to ensure disclosure of executive compensation of both prime and subawardees and sub-award data pursuant to the Transparency Act. This information collection requires reporting of only the information enumerated under the Transparency Act.

B. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FFATA Subaward and Executive Compensation Reporting Requirements, whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology. A 60-day notice requesting comments was published in the **Federal Register** at 78 FR 79454 on December 30, 2013, no comments were received.

C. Annual Reporting Burden

Sub-award Responses: 252,382.

Hours per Response: .5.

Total Burden Hours: 126,191.

Executive Compensation Responses: 44,596.

Hours per Response: 1.

Total Burden Hours: 44,596.

Obtaining Copies Of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755.

Please cite OMB Control No. 3090–0292, FFATA Subaward and Executive Compensation Reporting Requirements, in all correspondence.

Dated: March 18, 2014.

Sonny Hashmi,

Deputy Chief Information Officer, Office of the Deputy CIO.

[FR Doc. 2014–06530 Filed 3–24–14; 8:45 am]

BILLING CODE 6820–WY–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0290; Docket No. 2013–0001; Sequence No. 10]

Submission to OMB Review; System for Award Management Registration Requirements for Prime Grant Recipients

AGENCY: Office of the Integrated Award Environment, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB information collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of the currently approved information collection requirement regarding the pre-award registration requirements for Prime Grant Recipients. The title of the approved information collection is Central Contractor Registration Requirements for Prime Grant Recipients (OMB Control Number 3090–0290). The updated information collection title, based on the migration of the Central Contractor Registration system to the System for Award Management in late July 2012, is System for Award Management Registration Requirements for Prime Grant Recipients.

DATES: Submit comments on or before April 24, 2014.

ADDRESSES: Submit comments identified by Information Collection 3090–0290, System for Award Management Registration Requirements for Prime Grant Recipients by any of the following methods:

- Regulations.gov: *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number 3090–0290. Select the link ''Comment Now'' that corresponds with ''Information Collection 3090–0290, System for Award Management Registration Requirements for Prime Grant Recipients''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information

Collection 3090–0290, System for Award Management Registration Requirements for Prime Grant Recipients'' on your attached document.

- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: IC 3090–0290.

Instructions: Please submit comments only and cite Information Collection 3090–0290, System for Award Management Registration Requirements for Prime Grant Recipients, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Berry, Program Analyst, Office of the Integrated Award Environment, at telephone number 703–605–2984; or via email *stephen.berry@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

This information collection requires information necessary for prime applicants and recipients, excepting individuals, of Federal financial assistance to register in the System for Award Management (SAM) and maintain an active SAM registration with current information at all times during which they have an active Federal award or an application or plan under consideration by an agency pursuant to 2 CFR Subtitle A, Chapter I, and Part 25 (75 FR 5672). This facilitates prime awardee reporting of sub-award and executive compensation data pursuant to the Federal Funding Accountability and Transparency Act (Pub. L. 109–282, as amended by section 6202(a) of Pub. L. 110–252). This information collection requires that all prime grant awardees, subject to reporting under the Transparency Act register and maintain their registration in SAM.

B. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the System for Award Management Registration Requirements for Prime Grant Recipients, whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology. A 60-day notice requesting comments was published in the **Federal Register** at 78 FR 79455 on December 30, 2013, no comments were received.

C. Annual Reporting Burden

Respondents: 204,726.
Responses Per Respondent: 1.
Total annual responses: 204,726.
Hours Per Response: 2.
Total Burden Hours: 409,452.
Obtaining Copies Of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–0290, System for Award Management Registration Requirements for Prime Grant Recipients, in all correspondence.

Dated: March 18, 2014.

Sonny Hashmi,

Deputy Chief Information Officer, Office of the Deputy CIO.

[FR Doc. 2014–06557 Filed 3–24–14; 8:45 am]

BILLING CODE 6820–WY–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0291; Docket No. 2013–0001; Sequence 11]

Submission for OMB Review; FSRS Registration Requirements for Prime Grant Awardees

AGENCY: Office of the Integrated Award Environment, General Services Administration (GSA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance information collection.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of the currently approved information collection requirement regarding FSRS Registration Requirements for Prime Grant Awardees. The title of the approved information collection is FSRS Registration and Prime Awardee Entity-Related Information Reporting Requirements. To clarify the purpose of the information collection, the updated title is FSRS Registration Requirements for Prime Grant Awardees.

DATES: Submit comments on or before April 24, 2014.

ADDRESSES: Submit comments identified by Information Collection 3090–0291, FSRS Registration Requirements for Prime Grant Awardees by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching OMB control number 3090–0291. Select the link ''Comment Now'' that corresponds with ''Information Collection 3090–0291, FSRS Registration Requirements for Prime Grant Awardees.'' Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 3090–0291, FSRS Registration Requirements for Prime Grant Awardees on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: IC 3090–0291.

Instructions: Please submit comments only and cite Information Collection 3090–0291, FSRS Registration Requirements for Prime Grant Awardees, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Berry, Program Analyst, Office of the Integrated Award Environment, GSA, at telephone number 703–605–2984; or via email *stephen.berry@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Funding Accountability and Transparency Act (Pub. L. 109–282, as amended by section 6202(a) of Pub. L. 110–252), known as FFATA or the Transparency Act, requires information disclosure of entities receiving Federal financial assistance through Federal awards such as Federal contracts, sub-contracts, grants and sub-grants, FFATA 2(a), (2), (i), (ii). The system that collects this information is called the FFATA Sub-award Reporting System (FSRS, *www.fsrs.gov*). This information collection requires information necessary for prime awardee registration in FSRS to create a user log-in and enable sub-award reporting for their entity. To register in FSRS for a user log-

in, an entity is required to provide their Data Universal Numbering System (DUNS) number. FSRS then pulls core data about the entity from their System for Award Management (SAM) registration to include the legal business name, physical address, mailing address and Commercial and Government Entity (CAGE) code. The entity completes the FSRS registration by providing contact information within the entity for approval.

If a prime awardee has already registered in FSRS to report contracts-related Transparency Act financial data, a new log-in will not be required. In addition, if a prime awardee had a user account in the Electronic Subcontract Reporting System (eSRS), a new log-in will not be required.

B. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FSRS Registration Requirements for Prime Grant Awardees, whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology. A 60-day notice, requesting comments was published in the **Federal Register** at 78 FR 79454 on December 30, 2013, no comments were received.

C. Annual Reporting Burden

Respondents: 1,844.
Responses Per Respondent: 1.
Total annual responses: 1,844.
Hours Per Response: .5.
Total Burden Hours: 922.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–0291, FSRS Registration Requirements for Prime Grant Awardees, in all correspondence.

Dated: March 18, 2014.

Sonny Hashmi,

Deputy Chief Information Officer, Office of the Deputy CIO.

[FR Doc. 2014–06555 Filed 3–24–14; 8:45 am]

BILLING CODE 6820–XY–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC)

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

Times and Dates: 9:00 a.m.–5:00 p.m., April 10, 2014.
9:00 a.m.–12:00 p.m., April 11, 2014.
Place: CDC Global Communications Center, Building 19, Auditorium B3, 1600 Clifton Road NE., Atlanta, Georgia 30333.
Status: Open to the public, limited only by the space available. Please register for the meeting at *www.cdc.gov/hicpac.*
Purpose: The Committee is charged with providing advice and guidance to the Director, Division of Healthcare Quality Promotion, the Director, National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), the Director, CDC, the Secretary, Health and Human Services regarding (1) the practice of healthcare infection prevention and control; (2) strategies for surveillance, prevention, and control of infections, antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of CDC guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.
Matters for Discussion: The agenda will include updates on the Draft Guideline to Prevent Surgical Site Infections, CDC and Division of Healthcare Quality Promotion's (DHQP's) activities for prevention and surveillance of healthcare associated infections (HAI), core infection prevention and control practices and the Draft Health Care Personnel guideline.
Agenda items are subject to change as priorities dictate.
Contact Person for More Information: Erin Stone, M.S., HICPAC, Division of Healthcare Quality Promotion, NCEZID, CDC, 1600 Clifton Road, NE., Mailstop A–07, Atlanta, Georgia 30333 Telephone (404) 639–4045. Email: *hicpac@cdc.gov.*
The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

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

[FR Doc. 2014–06455 Filed 3–24–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Subcommittee on Procedures Review, Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

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

Time And Date: 11:00 a.m.–5:00 p.m., EST, April 16, 2014.
Place: Audio Conference Call via FTS Conferencing. The USA toll-free, dial-in number is 1–866–659–0537 and the pass code is 9933701.
Status: Open to the public. The public is welcome to submit written comments in advance of the meeting, to the contact person below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcome to listen to the meeting by joining the teleconference at the USA toll-free, dial-in number, 1–866–659–0537 and the passcode is 9933701.
Background: The ABRWH was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the compensation program. Key functions of the ABRWH include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).
In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2015.
Purpose: The ABRWH is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, providing advice to the Secretary on whether there is a class of employees at any Department of Energy facility who were

exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is a reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee on Procedures Review was established to aid the ABRWH in carrying out its duty to advise the Secretary, HHS, on dose reconstructions. The Subcommittee on Procedures Review is responsible for overseeing, tracking, and participating in the reviews of all procedures used in the dose reconstruction process by the NIOSH Division of Compensation Analysis and Support (DCAS) and its dose reconstruction contractor (Oak Ridge Associated Universities—ORAU).

Matters For Discussion: The agenda for the Subcommittee meeting includes: discussion of procedures in the following ORAU and DCAS technical documents: ORAU Team Technical Information Bulletin (OTIB)0034 (''Internal Dose Coworker Data for X–10''), OTIB 0054 (''Fission and Activation Product Assignment for Internal Dose-Related Gross Beta and Gross Gamma Analyses''), OTIB 0083 (''Dissolution Models for Insoluble Plutonium 238''), Program Evaluation Report (PER) 011 (''K–25 [Technical Basis Document] TBD and TIB Revisions''), PER 020 (''Blockson TBD Revision''), PER 031 (''Y–12 TBD Revisions''), PER 033 (''Reduction Pilot Plant TBD Revision''), PER 038 (''Hooker Electrochemical TBD Revisions''); Update on Review of ORAU Team Report 0053 (''Stratified Co-Worker Sets''); discussion of estimating radiation doses associated with localized skin exposures to uranium at Atomic Weapons Employer facilities; and a continuation of the comment-resolution process for other dose reconstruction procedures under review by the Subcommittee.

The agenda is subject to change as priorities dictate.

Contact Person For More Information: Theodore Katz, Designated Federal Officer, NIOSH, CDC, 1600 Clifton Road NE., Mailstop E–20, Atlanta Georgia 30333, Telephone (513) 533–6800, Toll Free 1(800)CDC–INFO, Email *ocas@cdc.gov.* The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

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

[FR Doc. 2014–06452 Filed 3–24–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

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

The meeting announced below concerns Research Approaches to Improve the Care and Outcomes of People Living with Spina Bifida, FOA DD14–002, initial review.

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

Times and Dates: 9:00 a.m.–6:00 p.m., April 14, 2014 (Closed).

9:00 a.m.–6:00 p.m., April 15, 2014 (Closed).

9:00 a.m.–6:00 p.m., April 16, 2014 (Closed).

9:00 a.m.–6:00 p.m., April 17, 2014 (Closed).

Place: Teleconference.

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

Matters For Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Research Approaches to Improve the Care and Outcomes of People Living with Spina Bifida, FOA DD14–002, initial review.''

Contact Person For More Information: M. Chris Langub, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway NE., Mailstop F–80, Atlanta, Georgia 30341, Telephone: (770) 488–3585, *EEO6@cdc.gov.*

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

Elaine L. Baker,

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

[FR Doc. 2014–06450 Filed 3–24–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

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

The meeting announced below concerns A Creutzfeldt-Jakob Disease (CJD) Lookback Study: Assessing the Risk of Blood Borne Transmission of Classic Forms of Creutzfeldt-Jakob Disease, Funding Opportunity Announcement (FOA) CK14–005, initial review.

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

Time And Date: 2:00 p.m.–3:30 p.m., EST, April 15, 2014 (Closed).

Place: Teleconference.

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

Matters For Discussion: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''A Creutzfeldt-Jakob Disease (CJD) Lookback Study: Assessing the Risk of Blood Borne Transmission of Classic Forms of Creutzfeldt-Jakob Disease, FOA CK14–005, initial review.''

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

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

Elaine L. Baker,

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

[FR Doc. 2014–06451 Filed 3–24–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

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

The meeting announced below concerns Grants for Injury Control

Research Centers (Panel 3), Funding Opportunity Announcement (FOA) CE14–001, initial review.

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

Time and Date: 9:00 a.m.–6:00 p.m. EST, April 17–18, 2014 (Closed).

Place: Georgian Terrace, 659 Peachtree Road NE., Room 4, Atlanta, Georgia 30308. This meeting will also be held by teleconference.

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

Matters For Discussion: The meeting will include the initial review, discussion, and evaluation of developmental center applications received in response to ''Grants for Injury Control Research Centers, Panel 3, FOA CE14–001''.

Contact Person For More Information: Jane Suen, Dr.P.H., M.S., Scientific Review Officer, CDC, 4770 Buford Highway NE., Mailstop F63, Atlanta, Georgia 30341–3724, Telephone (770) 488–4281.

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

Elaine L. Baker,

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

[FR Doc. 2014–06453 Filed 3–24–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Mine Safety and Health Research Advisory Committee, National Institute for Occupational Safety and Health (MSHRAC, NIOSH)

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

Times and Dates: 8:30 a.m.–5:30 p.m., April 9, 2014; 8:30 a.m.–3:00 p.m., April 10, 2014.

Place: DoubleTree by Hilton, Pittsburgh Airport, 8402 University Boulevard, Moon Township, Pennsylvania 15108 Telephone: (412) 329–1400, Fax: (412) 329–1410.

Status: Open to public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: This committee is charged with providing advice to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NIOSH, on priorities in mine safety and health research, including grants and contracts for such research, 30 U.S.C. 812(b)(2), Section 102(b)(2).

Matters for Discussion: The meeting will focus on mining safety and health research projects and outcomes, including program imperatives, e.g. respirable dust control, oxygen supply, explosion prevention, metal mine ground control, and health and safety management systems; and select project start-ups including source control of float dust, improving self-escape and a refuge chamber demonstration task. The meeting will also include updates from the National Personal Protective Technology Laboratory and the Division of Respiratory Disease Studies; and continuation of the discussions on Implementation of the National Academies Recommendations for continuous improvement of the mining research program.

Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Jeffery L. Kohler, Ph.D., Designated Federal Officer, MSHRAC, NIOSH, CDC, 626 Cochrans Mill Road, Mailstop P05, Pittsburgh, Pennsylvania 15236, Telephone (412) 386–5301, Fax (412) 386–5300. The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 2014–06454 Filed 3–24–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Office of Public Health Preparedness and Response, Board of Scientific Counselors (BSC OPHPR)

Correction: This notice was published in the **Federal Register** on March 11, 2014, Volume 79, Number 47, page 13655. The meeting date previously published should read: 10:00 a.m.–5:15 p.m., EST, April 7, 2014 and 8:00 a.m.–3:15 p.m., EST, April 8, 2014.

Contact Person For More Information: Marquita Black, Executive Assistant, Office of Science and Public Health Practice, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop D–44, Atlanta, Georgia 30333, Telephone: (404) 639–7325; Facsimile: (404) 639–7977; Email: *OPHPR.BSC.Questions@cdc.gov.*

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

Elaine L. Baker,

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

[FR Doc. 2014–06449 Filed 3–24–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–216–94 and CMS–10224]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by May 23, 2014.

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

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

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ___, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

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

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

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

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

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

SUPPLEMENTARY INFORMATION:

Contents

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

CMS–216–94 Organ Procurement Organization/Histocompatibility Laboratory Cost Report

CMS–10224 Healthcare Common Procedure Coding System (HCPCS)—Level II Code Modification Request Process

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

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Organ Procurement Organization/Histocompatibility Laboratory Cost Report; *Use:* We are requesting an extension of the Form CMS 216–94, Organ Procurement Organization (OPO)/Histocompatibility Laboratory Cost Report. These cost reports are filed annually by freestanding OPO and Histocompatibility Lab providers participating in the Medicare program to determine the reasonable costs incurred to furnish treatment for renal transplant patients. *Form Number:* CMS–216–94 (OCN: 0938–0102); *Frequency:* Annually; *Affected Public:* Private sector—Business or other for-profits; *Number of Respondents:* 107; *Total Annual Responses:* 107 *Total Annual Hours:* 4,815. (For policy questions regarding this collection contact Angela Havrilla at 410–786–4516.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Healthcare Common Procedure Coding System (HCPCS)—Level II Code Modification Request Process; *Use:* Each year, in the United States, health care insurers process over 5 billion claims for payment. For Medicare and other health insurance programs to ensure that these claims are processed in an orderly and consistent manner, standardized coding systems are essential. The Healthcare Common Procedure Coding System (HCPCS) Level II Code Set is one of the standard code sets used for this purpose. Level II of the HCPCS, also referred to as alpha-numeric codes, is a standardized coding system that is used primarily to identify products, supplies, and services not included in the CPT codes, such as ambulatory services and durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) when used in the home or outpatient setting.

The HCPCS codeset has been maintained and distributed via modifications of codes, modifiers and descriptions, as a direct result of data received from applicants. The HCPCS codeset maintenance is an ongoing process, as changes are implemented and updated annually; therefore, the process requires continual collection of information from applicants on an annual basis. As new technology evolves and new devices, drugs and supplies are introduced to the market, applicants submit applications to us requesting modifications to the HCPCS Level II codeset. *Form Number:* CMS–10224 (OCN: 0938–1042); *Frequency:* Annually; *Affected Public:* Private sector—Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 300; *Total Annual Responses:* 300 *Total Annual Hours:* 3,300. (For policy questions regarding this collection contact Kimberlee Combs Miller at 410–786–6707.)

Dated: March 19, 2014.

Martique Jones,

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

[FR Doc. 2014–06516 Filed 3–24–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10462]

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

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity

of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by April 24, 2014.

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR* Email: *OIRA_submission@omb.eop.gov*.

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

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

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*.

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

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

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Community First Choice Option Evaluation; *Use:* This project is an evaluation of the implementation and progress of the Community First Choice (CFC) Option. The results of the study will be included in the final Report to Congress, to be delivered by the Secretary of Health and Human Services in 2015. The project is designed to assist us along with the Congress in our understanding of: States' CFC implementation plans, the effectiveness of the CFC Option on individuals receiving home- and community-based attendant care, and States' spending on long-term services and supports.

Researchers will request data from States approved for CFC via a data from and semi-structured interviews. Information obtained will be used to better understand CFC program design, the targeted patient population, and intended outcomes. At this time, we have only approved California's program. To provide comparative information to the Secretary, researchers will also collect data from States that have decided not to pursue the CFC option. Data will be analyzed and developed into a report to Congress which will evaluate the effectiveness of the CFC option, the program's impact on participants' physical and emotional health, and a comparative analysis of the costs of community-based services and those provided in institutional settings. *Form Number:* CMS–10462 (OCN: 0938-New); *Frequency:* Once; *Affected Public:* Individuals and households, Private sector—Business or other for-profits and Not-for-profit institutions, and State, Local, or Tribal Governments; *Number of Respondents:* 108; *Total Annual Responses:* 126; *Total Annual Hours:* 225. (For policy questions regarding this collection contact Elizabeth Garbarczyk at 410–786–0426).

Dated: March 19, 2014.

Martique Jones,

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

[FR Doc. 2014–06518 Filed 3–24–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4132–PN]

Medicare Program; Renewal of Deeming Authority of the Accreditation Association for National Committee for Quality Assurance (NCQA)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed notice.

SUMMARY: This proposed notice announces our proposal to renew the Medicare Advantage deeming authority of the National Committee for Quality Assurance (NCQA) for a term of 6 years. This new term of approval would begin October 19, 2014 and end October 18, 2020. This notice announces a 30-day period for public comments on the renewal of the application.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on April 24, 2014.

ADDRESSES: In commenting, refer to file code CMS–4132–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov*. Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4132–PN, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4132–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written ONLY to the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert

H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Jennifer Bates, 410–786–6258 or Milonda Mitchell, 410–786–1644

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov*. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services through a Medicare Advantage (MA) organization that contracts with the Centers for Medicare & Medicaid Services (CMS). The regulations specifying the Medicare requirements that must be met in order for a Medicare Advantage Organization (MAO) to enter into a contract with CMS are located at 42 CFR part 422. These regulations implement Part C of Title XVIII of the Social Security Act (the Act), which specifies the services that an MAO must provide and the requirements that the organization must meet to offer an MA plan. Other relevant sections of the Act are Parts A and B of Title XVIII and Part A of Title XI pertaining to the provision of services by Medicare-certified providers and suppliers. Under § 422.400, one significant prerequisite for an entity to be an MA organization is that the organization be licensed by the state as a risk bearing organization, unless a waiver is authorized for a provider-sponsored organization pursuant to § 422.370. In addition, MAOs and MA plans must meet requirements related to access to services, antidiscrimination, confidentiality and accuracy of beneficiary records, provider participation, advance directives, and quality assurance programs.

As a method of assuring compliance with certain Medicare requirements, an MA organization may choose to become accredited by a CMS approved accrediting organization (AO). In addition to their CMS-recognized deemed status accreditation program, approved AOs offer other accreditation programs that are not recognized by CMS. For Medicare participation purposes, the MA organization may be ''deemed'' compliant in one or more of six requirements set forth in section 1852(e)(4)(B) of the Act and § 422.156(b). In order for an AO to be able to ''deem'' an MA plan as compliant with these MA requirements, the AO must demonstrate that it meet the requirements outlined in § 422.157, including demonstrating that its standards are at least as stringent as Medicare requirements with respect to the standards in the deemable area. Therefore, for example, MA organizations that are licensed as health maintenance organizations (HMOs) or preferred provider organizations (PPOs) and are accredited by an approved accrediting organization may receive, at the MA organization's request, deemed status for CMS requirements in the following six MA areas: Quality Improvement, Antidiscrimination, Access to Services, Confidentiality and Accuracy of Enrollee Records, Information on Advanced Directives, and Provider Participation Rules. *See* § 422.156(b). Organizations that apply for MA deeming authority are generally recognized by the health care industry as entities that accredit HMOs and PPOs. As specified at § 422.157(b)(2)(ii), the term for which an AO may be approved by CMS may not exceed 6 years. For continuing approval, the AO must renew its application with CMS.

The National Committee for Quality Assurance (NCQA) was approved as an accrediting organization for MA deeming of HMOs on October 19, 2010, and that term will expire on October 18, 2014. On January 30, 2014, NCQA submitted an application to renew its deeming authority. On that same date, NCQA submitted materials requested from CMS which included updates and/or changes to items listed in § 422.158(a) that are prerequisites for receiving deeming program approval by CMS, and which were furnished to CMS by NCQA as a part of its renewal applications for HMOs and PPOs.

II. Provisions of the Proposed Notice

The purpose of this notice is to notify the public of the NCQA's request to renew its Medicare Advantage deeming authority for HMOs and PPOs. NCQA submitted all the necessary materials (including its standards and monitoring protocol) to enable us to make a determination concerning its request for approval as an accreditation organization for CMS. This renewal application was determined to be complete on February 6, 2014. Under section § 1852(e)(4) of the Act and § 422.158 (federal review of accrediting organizations), our review and evaluation of NCQA will be conducted as discussed below.

A. Components of the Review Process

The review of NCQA's renewal application for approval of MA deeming authority includes the following components:

- The types of MA plans that it would review as part of its accreditation process.
- A detailed comparison of the AO's accreditation requirements and standards with the Medicare requirements (for example, a crosswalk).
- Detailed information about the organization's survey process, including—

++ Frequency of surveys and whether surveys are announced or unannounced.

++ Copies of survey forms, and guidelines and instructions to surveyors.

++ Descriptions of—

—The survey review process and the accreditation status decision making process;

—The procedures used to notify accredited MA organizations of deficiencies and to monitor the correction of those deficiencies; and
—The procedures used to enforce compliance with accreditation requirements.

• Detailed information about the individuals who perform surveys for the accreditation organization, including—

++ The size and composition of accreditation survey teams for each type of plan reviewed as part of the accreditation process;

++ The education and experience requirements surveyors must meet;

++ The content and frequency of the in-service training provided to survey personnel;

++ The evaluation systems used to monitor the performance of individual surveyors and survey teams; and

++ The organization's policies and practice with respect to the participation, in surveys or in the accreditation decision process by an individual who is professionally or financially affiliated with the entity being surveyed.

• A description of the organization's data management and analysis system with respect to its surveys and accreditation decisions, including the kinds of reports, tables, and other displays generated by that system.

• A description of the organization's procedures for responding to and investigating complaints against accredited organizations, including policies and procedures regarding coordination of these activities with appropriate licensing bodies and ombudsmen programs.

• A description of the organization's policies and procedures with respect to the withholding or removal of accreditation for failure to meet the accreditation organization's standards or requirements, and other actions the organization takes in response to noncompliance with its standards and requirements.

• A description of all types (for example, full, partial) and categories (for example, provisional, conditional, temporary) of accreditation offered by the organization, the duration of each type and category of accreditation and a statement identifying the types and categories that would serve as a basis for accreditation if CMS approves the accreditation organization.

• A list of all currently accredited MA organizations and the type, category, and expiration date of the accreditation held by each of them.

• A list of all full and partial accreditation surveys scheduled to be performed by the accreditation organization.

• The name and address of each person with an ownership or control interest in the accreditation organization.

• CMS will also consider NCQA's past performance in the deeming program and results of recent deeming validation reviews, or look-behind audits conducted as part of continuing federal oversight of the deeming program under § 422.157(d).

B. Notice Upon Completion of Evaluation

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a notice in the **Federal Register** announcing the result of our evaluation.

Section 1852(e)(4)(C) of the Act provides a statutory timetable to ensure that our review of deeming applications is conducted in a timely manner. The Act provides us with 210 calendar days after the date of receipt of an application to complete our survey activities and application review process. At the end of the 210 day period, we must publish an approval or denial of the application in the **Federal Register**.

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

Dated: March 14, 2014.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2014–06520 Filed 3–24–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1610–N]

Medicare Program; Public Meeting on July 14, 2014 Regarding New Clinical Diagnostic Laboratory Test Codes for the Clinical Laboratory Fee Schedule for Calendar Year 2015

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces a public meeting to receive comments and recommendations (including accompanying data on which recommendations are based) from the public on the appropriate basis for establishing payment amounts for new or substantially revised Healthcare Common Procedure Coding System (HCPCS) codes being considered for Medicare payment under the clinical laboratory fee schedule (CLFS) for calendar year (CY) 2015. This meeting also provides a forum for those who submitted certain reconsideration requests regarding final determinations made last year on new test codes and for the public to provide comment on the requests.

DATES: *Meeting Date:* The public meeting is scheduled for Monday, July 14, 2014 from 9:00 a.m. to 3:00 p.m., Eastern Daylight Savings Time.

Deadline for Registration of Presenters and Submission of Presentations: All presenters for the public meeting must register and submit their presentations electronically to Glenn McGuirk at *Glenn.McGuirk@cms.hhs.gov* by July 3, 2014.

Deadline for Submitting Requests for Special Accommodations: Requests for special accommodations must be received no later than 5:00 p.m. on July 3, 2014.

Deadline for Submission of Written Comments: We intend to publish our proposed determinations for new test codes and our preliminary determinations for reconsidered codes (as described below) for CY 2015 by early September. Interested parties may submit written comments on these determinations by early October, 2014 to the address specified in the **ADDRESSES** section of this notice or electronically to Glenn McGuirk at *Glenn.McGuirk@cms.hhs.gov* (the specific date for the publication of these determinations on the CMS Web site, as well as the deadline for submitting comments regarding these

determinations will be published on the CMS Web site).

ADDRESSES: The public meeting will be held in the main auditorium of the Centers for Medicare & Medicaid Services (CMS), Central Building, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: Glenn McGuirk, (410) 786–5723.

SUPPLEMENTARY INFORMATION:

I. Background

Section 531(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554) requires the Secretary of the Department of Health and Human Services (the Secretary) to establish procedures for coding and payment determinations for new clinical diagnostic laboratory tests under Part B of title XVIII of the Social Security Act (the Act) that permit public consultation in a manner consistent with the procedures established for implementing coding modifications for International Classification of Diseases (ICD–9–CM). The procedures and public meeting announced in this notice for new tests are in accordance with the procedures published on November 23, 2001 in the **Federal Register** (66 FR 58743) to implement section 531(b) of BIPA.

Section 942(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) added section 1833(h)(8) of the Act. Section 1833(h)(8)(A) of the Act requires the Secretary to establish by regulation procedures for determining the basis for, and amount of, payment for any clinical diagnostic laboratory test with respect to which a new or substantially revised Healthcare Common Procedure Coding System (HCPCS) code is assigned on or after January 1, 2005 (hereinafter referred to as ''new tests''). A code is considered to be substantially revised if ''there is a substantive change to the definition of the test or procedure to which the code applies (such as, a new analyte or a new methodology for measuring an existing analyte-specific test).'' (See section 1833(h)(8)(E)(ii) of the Act).

Section 1833(h)(8)(B) of the Act sets forth the process for determining the basis for, and the amount of, payment for new tests. Pertinent to this notice, section 1833(h)(8)(B)(i) and (ii) of the Act requires the Secretary to make available to the public a list that includes any such test for which establishment of a payment amount is being considered for a year and, on the same day that the list is made available, cause to have published in the **Federal Register** notice of a meeting to receive comments and recommendations (including accompanying data, which recommendations are based) from the public on the appropriate basis for establishing payment amounts for the tests on such list. This list of codes for which the establishment of a payment amount under the clinical laboratory fee schedule (CLFS) is being considered for calendar year (CY) 2015 is posted on the CMS Web site at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ClinicalLabFeeSched/index.html?redirect=/ClinicalLabFeeSched/*. Section 1833(h)(8)(B)(iii) of the Act requires that we convene the public meeting not less than 30 days after publication of the notice in the **Federal Register**. These requirements are codified at 42 CFR part 414, subpart G.

Two bases of payment are used to establish payment amounts for new tests. The first basis called ''crosswalking,'' is used when a new test is determined to be comparable to an existing test code, multiple existing test codes, or a portion of an existing test code. The new test code is assigned the local fee schedule amounts and the national limitation amount of the existing test. Payment for the new test is made at the lesser of the local fee schedule amount or the national limitation amount. (See 42 CFR 414.508(a).)

The second basis called ''gapfilling,'' is used when no comparable existing test is available. When using this method, instructions are provided to each Medicare carrier or Part A and Part B Medicare Administrative Contractor (MAC) to determine a payment amount for its carrier geographic areas) for use in the first year. The contractor-specific amounts are established for the new test code using the following sources of information, if available: Charges for the test and routine discounts to charges; resources required to perform the test; payment amounts determined by other payers; and charges, payment amounts, and resources required for other tests that may be comparable or otherwise relevant. (See 42 CFR 414.508(b) and 414.509 for more information regarding the gapfilling process.)

Under section 1833(h)(8)(B)(iv) of the Act, the Secretary, taking into account the comments and recommendations (and accompanying data) received at the public meeting, develops and makes available to the public a list of proposed determinations with respect to the appropriate basis for establishing a payment amount for each code, an explanation of the reasons for each determination, the data which the determinations are based, and a request for public written comments on the proposed determinations. Under section 1833(h)(8)(B)(v) of the Act, taking into account the comments received during the public comment period, the Secretary develops and makes available to the public a list of final determinations of final payment amounts for new test codes along with the rationale for each determination, the data which the determinations are based, and responses to comments and suggestions received from the public.

After the final determinations have been posted on our Web site, the public may request reconsideration of the basis and amount of payment for a new test as set forth in § 414.509. Pertinent to this notice, those requesting that CMS reconsider the basis for payment or, for crosswalking, reconsider the payment amount as set forth in § 414.509(a) and (b)(1) may present their reconsideration requests at the following year's public meeting provided that the requestor made the request to present at the public meeting in the written reconsideration request. For purposes of this notice, we refer to these codes as the ''reconsidered codes.'' The public may comment on the reconsideration requests. (See the November 27, 2007 CY 2008 Physician Fee Schedule final rule with comment period (72 FR 66275 through 66280) for more information on these procedures.)

II. Format

We are following our usual process, including an annual public meeting to determine the appropriate basis and payment amount for new test codes under the CLFS for CY 2015.

This meeting is open to the public. The on-site check-in for visitors will be held from 8:30 a.m. to 9:00 a.m., followed by opening remarks. Registered persons from the public may discuss and make recommendations for specific new test codes for the CY 2015 CLFS.

Because of time constraints, presentations must be brief, lasting no longer than 10 minutes, and must be accompanied by three written copies. In addition, CMS recommends that presenters make copies available for approximately 50 meeting participants, since CMS will not be providing additional copies. Written presentations must be electronically submitted to CMS on or before July 3, 2014. Presentation slots will be assigned on a first-come, first-served basis. In the event that there is not enough time for presentations by everyone who is interested in presenting, CMS will

gladly accept written presentations from those who were unable to present due to time constraints. Presentations should be sent via email to Glenn McGuirk, at *Glenn.McGuirk@cms.hhs.gov*. For new test codes, presenters should address all of the following items:

- New test code(s) and descriptor.
- Test purpose and method.
- Costs.
- Charges.
- A recommendation, with rationale, for one of the two bases (crosswalking or gapfilling) for determining payment for new tests.

Additionally, the presenters should provide the data which their recommendations are based. Written presentations from the public meeting will be available upon request, via email, to Glenn McGuirk at *Glenn.McGuirk@cms.hhs.gov*. Presentations regarding new test codes that do not address the above five items may be considered incomplete and may not be considered by CMS when making a determination. CMS may request missing information following the meeting to prevent a recommendation from being considered incomplete.

Taking into account the comments and recommendations (and accompanying data) received at the public meeting, we intend to post our proposed determinations with respect to the appropriate basis for establishing a payment amount for each new test code and our preliminary determinations with respect to the reconsidered codes along with an explanation of the reasons for each determination, the data which the determinations are based, and a request for public written comments on these determinations on the CMS Web site by early September 2014. This Web site can be accessed at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ClinicalLabFeeSched/index.html?redirect=/ClinicalLabFeeSched/*. We also will include a summary of all comments received by August 4, 2014 (15 business days after the meeting). Interested parties may submit written comments on the proposed determinations for new test codes or the preliminary determinations for reconsidered codes by early October, 2014, to the address specified in the **ADDRESSES** section of this notice or electronically to Glenn McGuirk at *Glenn.McGuirk@cms.hhs.gov* (the specific date for the publication of the determinations on the CMS Web site, as well as the deadline for submitting comments regarding the determinations will be published on the CMS Web site). Final determinations for new test codes to be included for payment on the CLFS for CY 2015 and reconsidered codes will be posted on our Web site in November 2014, along with the rationale for each determination, the data which the determinations are based, and responses to comments and suggestions received from the public. The final determinations with respect to reconsidered codes are not subject to further reconsideration. With respect to the final determinations for new test codes, the public may request reconsideration of the basis and amount of payment as set forth in § 414.509.

III. Registration Instructions

The Division of Ambulatory Services in the CMS Center for Medicare is coordinating the public meeting registration. Beginning June 9, 2014, registration may be completed on-line at the following web address: *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ClinicalLabFeeSched/index.html?redirect=/ClinicalLabFeeSched/*. All the following information must be submitted when registering:

- Name.
- Company name.
- Address.
- Telephone numbers.
- Email addresses.

When registering, individuals who want to make a presentation must also specify which new test codes they will be presenting comments. A confirmation will be sent upon receipt of the registration. Individuals must register by the date specified in the **DATES** section of this notice.

IV. Security, Building, and Parking Guidelines

The meeting will be held in a Federal government building; therefore, Federal security measures are applicable. In planning your arrival time, we recommend allowing additional time to clear security. It is suggested that you arrive at the CMS facility between 8:15 a.m. and 8:30 a.m., so that you will be able to arrive promptly at the meeting by 9:00 a.m. Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 8:15 a.m. (45 minutes before the convening of the meeting).

Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel. Persons without proper identification may be denied access to the building.
- Interior and exterior inspection of vehicles (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.
- Passing through a metal detector and inspection of items brought into the building.

We note that all items brought to CMS, whether personal or for the purpose of demonstration or to support a demonstration, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a demonstration.

V. Special Accommodations

Individuals attending the meeting who are hearing or visually impaired and have special requirements, or a condition that requires special assistance, should provide that information upon registering for the meeting. The deadline for registration is listed in the **DATES** section of this notice.

Dated: March 14, 2014.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2014–06515 Filed 3–24–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3292–N]

Medicare Program; Announcement of the Approval of the American Association for Laboratory Accreditation (A2LA) as an Accreditation Organization Under the Clinical Laboratory Improvement Amendments of 1988

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the application of the American Association for Laboratory Accreditation (A2LA) for approval as an accreditation organization for clinical laboratories under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) program for all specialty and subspecialty areas under CLIA. We have determined that the A2LA meets or

exceeds the applicable CLIA requirements. We are announcing the approval and granting the A2LA deeming authority for a period of 4 years.

DATES: *Effective Date:* This notice is effective from March 25, 2014 to March 26, 2018.

FOR FURTHER INFORMATION CONTACT: Cindy Flacks, (410) 786–6520.

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Authority

On October 31, 1988, the Congress enacted the Clinical Laboratory Improvement Amendments of 1988 (CLIA) (Pub. L. 100–578). CLIA amended section 353 of the Public Health Service Act. We issued a final rule implementing the accreditation provisions of CLIA on July 31, 1992 (57 FR 33992). Under those provisions, we may grant deeming authority to an accreditation organization if its requirements for laboratories accredited under its program are equal to or more stringent than the applicable CLIA program requirements in 42 CFR part 493 (Laboratory Requirements). Subpart E of part 493 (Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program) specifies the requirements an accreditation organization must meet to be approved by CMS as an accreditation organization under CLIA.

II. Notice of Approval of the A2LA as an Accreditation Organization

In this notice, we approve the American Association for Laboratory Accreditation (A2LA) as an organization that may accredit laboratories for purposes of establishing their compliance with CLIA requirements for all specialty and subspecialty areas under CLIA. We have examined the initial A2LA application and all subsequent submissions to determine its accreditation program's equivalency with the requirements for approval of an accreditation organization under subpart E of part 493. We have determined that the A2LA meets or exceeds the applicable CLIA requirements. We have also determined that the A2LA will ensure that its accredited laboratories will meet or exceed the applicable requirements in subparts H, I, J, K, M, Q, and the applicable sections of R. Therefore, we grant the A2LA approval as an accreditation organization under subpart E of part 493, for the period stated in the **DATES** section of this notice for all specialty and subspecialty areas under CLIA. As a result of this determination, any laboratory that is accredited by the A2LA during the time period stated in the **DATES** section of this notice will be deemed to meet the CLIA requirements for the listed subspecialties and specialties, and therefore, will generally not be subject to routine inspections by a State survey agency to determine its compliance with CLIA requirements. The accredited laboratory, however, is subject to validation and complaint investigation surveys performed by CMS, or its agent(s).

III. Evaluation of the A2LA Request for Approval as an Accreditation Organization Under CLIA

The following describes the process used to determine that the A2LA accreditation program meets the necessary requirements to be approved by CMS and that, as such, CMS may approve the A2LA as an accreditation program with deeming authority under the CLIA program. The A2LA formally applied to CMS for approval as an accreditation organization under CLIA for all specialties and subspecialties under CLIA. In reviewing these materials, we reached the following determinations for each applicable part of the CLIA regulations:

A. Subpart E—Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program

The A2LA submitted its mechanism for monitoring compliance with all requirements equivalent to condition-level requirements, a list of all its current laboratories and the expiration date of their accreditation, and a detailed comparison of the individual accreditation requirements with the comparable condition-level requirements. The A2LA policies and procedures for oversight of laboratories performing laboratory testing for all CLIA specialties and subspecialties are equivalent to those of CLIA in the matters of inspection, monitoring proficiency testing (PT) performance, investigating complaints, and making PT information available. The A2LA submitted requirements for monitoring and inspecting laboratories in the areas of accreditation organization, data management, the inspection process, procedures for removal or withdrawal of accreditation, notification requirements, and accreditation organization resources. The requirements of the accreditation program submitted for approval are equal to or more stringent than the requirements of the CLIA regulations.

Our evaluation identified the A2LA's requirements pertaining to waived testing, provider performed microscopy procedures, and moderate complexity testing that are more stringent than the CLIA requirements. The A2LA's requirements for high complexity testing are equivalent to the CLIA requirements. The A2LA will only accredit for waived tests or provider performed microscopy procedures if the laboratory is also applying for high or moderate complexity testing accreditation. Under the A2LA's requirements, laboratories performing any of these levels of testing will be held to the high complexity personnel requirements for all testing that the A2LA will accredit (high, moderate, waived or provider performed microscopy), as well as the requirements for nonwaived testing located in Subparts H, J, K, M, Q, and applicable parts of R.

In contrast, the CLIA requirements at § 493.15 only require that a laboratory performing waived testing follow the manufacturer's instructions and obtain a certificate of waiver. The CLIA requirements at § 493.19 require that a laboratory performing provider performed microscopy procedures meet personnel requirements located at § 493.1355 through § 493.1365. The CLIA requirements at § 493.20 require that a laboratory performing moderate complexity testing meet the personnel requirements located at § 493.1403 through § 493.1425.

B. Subpart H—Participation in Proficiency Testing for Laboratories Performing Nonwaived Testing

The A2LA's requirements are equal to or more stringent than the CLIA requirements at § 493.801 through § 493.865. For instance, the A2LA requires that laboratories conduct proficiency testing activities for both primary and secondary test systems for waived and non-waived testing. The CLIA requirement at § 493.801(b)(6) requires proficiency testing activities for the primary test system and for non-waived testing only.

C. Subpart J—Facility Administration for Nonwaived Testing

The A2LA requirements for the submitted subspecialties and specialties are equal to the CLIA requirements at § 493.1100 through § 493.1105.

D. Subpart K—Quality System for Nonwaived Testing

The A2LA requirements are equal to or more stringent than the CLIA requirements at § 493.1200 through § 493.1299. For instance, laboratories

that are performing waived testing in addition to moderate or high complexity testing will need to meet all requirements in subpart K, Quality System for Nonwaived Testing. The A2LA has more specific requirements for laboratory information systems than CLIA. In addition, prior to adding a new test to the laboratory's accreditation, the A2LA requires the laboratory to submit performance specifications for review and approval.

E. Subpart M—Personnel for Nonwaived Testing

We have determined that the A2LA's requirements are equal to or more stringent than the CLIA requirements at § 493.1403 through § 493.1495 for laboratories that perform moderate and high complexity testing. Under the A2LA's requirements, laboratories that perform moderate complexity testing must meet the personnel requirements for high complexity testing located at § 493.1441 through § 493.1495.

F. Subpart Q—Inspections

We have determined that the A2LA requirements for the submitted subspecialties and specialties are equal to or more stringent than the CLIA requirements at § 493.1771 through § 493.1780. The A2LA requires a two day onsite surveillance visit one year after the initial accreditation is granted. The A2LA requires annual review of all accredited laboratories. The laboratory is required to submit any updates on information about its organization, facilities, key personnel and results of any proficiency testing. Laboratories may be required to undergo an onsite surveillance visit if they do not submit their annual review documentation to the A2LA by the established 30 day deadline, if significant changes to the facility or organization have occurred, or if proficiency testing results have been consistently poor. The CLIA regulations do not have this requirement.

G. Subpart R—Enforcement Procedures

The A2LA meets the requirements of subpart R to the extent that it applies to accreditation organizations. The A2LA policy sets forth the actions the organization takes when laboratories it accredits do not comply with its requirements and standards for accreditation. When appropriate, the A2LA will deny, suspend, or revoke accreditation in a laboratory accredited by the A2LA and report that action to us within 30 days. The A2LA also provides an appeals process for laboratories that have had accreditation denied, suspended, or revoked.

We have determined that the A2LA's laboratory enforcement and appeal policies are equal to the requirements of part 493, subpart R as they apply to accreditation organizations.

IV. Federal Validation Inspections and Continuing Oversight

The Federal validation inspections of laboratories accredited by the A2LA may be conducted on a representative sample basis or in response to substantial allegations of noncompliance (that is, complaint inspections). The outcome of those validation inspections, performed by CMS or our agents, or the State survey agencies, will be our principal means for verifying that the laboratories accredited by the A2LA remain in compliance with CLIA requirements. This Federal monitoring is an ongoing process.

V. Removal of Approval as an Accrediting Organization

Our regulations provide that we may rescind the approval of an accreditation organization, such as that of the A2LA, for cause, before the end of the effective date of approval. If we determine that the A2LA has failed to adopt, maintain and enforce requirements that are equal to, or more stringent than, the CLIA requirements, or that systemic problems exist in its monitoring, inspection or enforcement processes, we may impose a probationary period, not to exceed 1 year, in which the A2LA would be allowed to address any identified issues. Should the A2LA be unable to address the identified issues within that timeframe, we may, in accordance with the applicable regulations, revoke A2LA's deeming authority under CLIA.

Should circumstances result in our withdrawal of the A2LA's approval, we will publish a notice in the **Federal Register** explaining the basis for removing its approval.

VI. Collection of Information Requirements

This notice does not impose any information collection and record keeping requirements subject to the Paperwork Reduction Act (PRA). Consequently, it does not need to be reviewed by the Office of Management and Budget (OMB) under the authority of the PRA. The requirements associated with the accreditation process for clinical laboratories under the CLIA program, codified in 42 CFR part 493 subpart E, are currently approved by OMB under OMB approval number 0938–0686.

VII. Executive Order 12866 Statement

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

Authority: Section 353 of the Public Health Service Act (42 U.S.C. 263a).

Dated: March 14, 2014.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2014–06512 Filed 3–24–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–0250]

Draft Guidance for Industry on Labeling for Human Prescription Drug and Biological Products Approved Under the Accelerated Approval Regulatory Pathway; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Labeling for Human Prescription Drug and Biological Products Approved Under the Accelerated Approval Regulatory Pathway.'' This draft guidance discusses FDA's recommendations for developing the indication and usage statements in the prescribing information for drugs approved under the accelerated approval regulatory pathway (hereafter ''accelerated approval''). The guidance also discusses labeling considerations for indications approved under accelerated approval when clinical benefit has been verified and FDA terminates the conditions of accelerated approval, or when FDA withdraws accelerated approval of an indication while other indications for the drug remain approved.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by May 27, 2014.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201,

Silver Spring, MD 20993–0002, or Office of Communication, Outreach, and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ann Marie Trentacosti, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6485, Silver Spring, MD 20993–0002, 301–796–2901; or Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Labeling for Human Prescription Drug and Biological Products Approved Under the Accelerated Approval Regulatory Pathway.'' Labeling must conform to the content and format requirements delineated in §§ 201.56(d) and 201.57 (21 CFR 201.56(d) and 201.57). Special provisions exist for older drug labeling under §§ 201.56(e) and 201.80. Labeling for drugs approved under the accelerated approval process is fundamentally the same as for drugs approved under the traditional pathway; however, for drugs approved under accelerated approval there are additional labeling requirements as described in § 201.57(c)(2)(i)(B) and recommended elements for consideration.

This draft guidance discusses FDA's recommendations for developing the indication and usage statements in the prescribing information for drugs approved under accelerated approval as defined in 21 CFR part 314, subpart H (for new drug applications) and 21 CFR part 601, subpart E (for biologics license applications) when the approval is based on an effect on a surrogate endpoint that is reasonably likely to predict clinical benefit, or an effect on a clinical endpoint that can be measured earlier than an effect on irreversible morbidity or mortality, that is reasonably likely to predict an effect on irreversible morbidity or mortality or other clinical benefit. The guidance also discusses labeling considerations for indications approved under accelerated approval when clinical benefit has been verified and FDA terminates the conditions of accelerated approval under 21 CFR 314.560 or 21 CFR 601.46, or when FDA withdraws accelerated approval of an indication while other indications for the drug remain approved.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on labeling for human prescription drug and biologic products approved under accelerated approval. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in §§ 201.56 and 201.57 have been approved under OMB control number 0910–0572.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/biologicsbloodVaccines/GuidanceComplianceRegulatoryInformation/guidances/default.htm,* or *http://www.regulations.gov*.

Dated: March 19, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–06471 Filed 3–24–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; The Hispanic Community Health Study/Study of Latinos (HCHS/SOL)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung and Blood Institute (NHLBI), National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and For Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Dr. Larissa Aviles-Santa, 6701 Rockledge, Epidemiology Branch, Program in Prevention and Population Sciences, Division of Cardiovascular Sciences, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Dr., MSC 7936, Bethesda, MD 20892–7936, or call non-toll-free number 301–435–0450, or Email your request, including your address to *avilessantal@nhlbi.nih.gov*. Formal requests for additional plans and

instruments must be requested in writing.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: The Hispanic Community Health Study/Study of Latinos (HCHS/SOL), Revised, National Heart, Lung and Blood Institute (NHLBI), National Institutes of Health (NIH).

Need and Use of Information Collection: The purpose and use of the information collection for this project is to study the prevalence of cardiovascular and pulmonary disease and other chronic diseases, and their risk and protective factors, understand their relationship to all-cause, cardiovascular and pulmonary morbidity and mortality, and understand the role of sociocultural factors (including acculturation) on the prevalence or onset of disease among over 16,400 Hispanics/Latinos of diverse origins, aged 18–74 years at enrollment, living in four U.S. communities: San Diego, California; Chicago, Illinois; Miami, Florida, and the Bronx, New York. In order to achieve these objectives, the HCHS/SOL had two integrated components:

1. Examination of the cohort following a standardized protocol, which consisted of interviews and clinical measurements to assess physiological and biochemical measurements including DNA/RNA extraction for ancillary genetic research studies.

2. Follow-up of the cohort, which consists of an annual telephone interview to assess vital status, changes in health status and medication intake, and new cardiovascular and pulmonary events (including fatal and non-fatal myocardial infarction and heart failure; fatal and non-fatal stroke; and exacerbation of asthma and chronic obstructive pulmonary disease).

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 30,940.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Survey instrument	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total burden hours
Participants Visit 2 Examination (Appendix 15).	Pre-visit scheduling & safety screening	13,878	1	2/60	463
	Reception, informed consent, medical releases.	13,878	1	20/60	4,626
	Ppt. safety update and routing	13,878	1	2/60	463
	Change clothes, urine specimen	13,878	1	10/60	2,313
	Updated personal information	13,878	1	5/60	1,157
	Anthropometry	13,878	1	7/60	1,619
	Determination of fasting & blood draw	13,878	1	11/60	2,544
	Determination of blood glucose, OGTT	13,878	1	6/60	1,388
	Seated BP	13,878		9/60	2,082
	Echocardiography	8,000		30/60	4,000
	2-hour blood draw, snack	13,878		12/60	2,776
	Personal Medical History	13,878	1	10/60	2,313
	Reproductive Medical History	9,000	1	9/60	1,350
	Pregnancy Complications History	9,000	1	4/60	600
	Socio-economic Status—Occupation	13,878	1	3/60	694
	Health Care Access and Utilization	13,878	1	15/60	3,470
	Chronic Stress	13,878	1	4/60	925
	Family Cohesion	13,878	1	5/60	1,157
	Social Support	13,878	1	3/60	694
	Acculturation	13,878	1	3/60	694
	Well Being	13,878	1	4/60	463
	Abbreviated Medication Use	13,878	1	4/60	925
	Tobacco Use	13,878	1	4/60	925
	Alcohol Use	13,878	1	3/60	694
	Participant Feedback	13,878	1	12/60	2,776
Total				197/60	41,111
Participants Annual Follow-Up Interview. (Appendix 16)	AFU Year 3	3,146	1	15/60	787
	AFU Year 4	9,033	1	15/60	2,258
	AFU Year 5	14,259	1	15/60	3,565
	AFU Year 6	16,222	1	15/60	4,055
	AFU Year 7	16,222	1	15/60	4,055
	AFU Year 8	16,222	1	15/60	4,055
	AFU Year 9	16,222	1	15/60	4,055
	AFU Year 10	16,222	1	15/60	4,055
	AFU Year 11	16,222	1	15/60	4,055
Total				120/60	30,940

Dated: March 11, 2014.

Michael Lauer,

Director, DCVS, NHLBI, NIH.

Dated: March 11, 2014.

Lynn Susulske,

NHLBI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2014–06401 Filed 3–24–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Co-Exclusive License: Device and System for Expression Microdissection (xMD)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209 and 37 CFR Part 404, that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of a co-exclusive commercial license agreement to practice the inventions embodied in International PCT Application S/N PCT/US03/23317 (HHS Ref. No. E–113–2003/0–PCT–02) filed July 23, 2003, which published as WO 2004/068104 on August 12, 2004, now expired; U.S. Patent No. 7,709,047 (HHS Ref. No. E–113–2003/0–US–03) issued May 4, 2010; U.S. Patent Application S/N 12/753,566 (HHS Ref. No. E–113–2003/0–US–07) filed April 2, 2010; U.S. Patent No. 7,695,752 (HHS Ref. No. E–113–2003/1–US–01) issued April 13, 2010; U.S. Patent No. 8,460,744 (HHS Ref. No. E–113–2003/1–US–02) issued June 11, 2013; Australian Patent No. 2003256803 (HHS Ref. No. E–113–2003/0–AU–04) issued January 21, 2010; Australian Patent No. 2009250964 (HHS Ref. No. E–113–2003/0–AU–06) issued March 25, 2013; and Canadian Patent No. 2513646 (HHS Ref. No. E–113–2003/0–CA–05) issued September 17, 2013, all entitled; ''Target Activated Microtransfer''; and all continuing applications and foreign counterparts to Ventana Medical Systems, Inc. a company having a place of business in Arizona. The patent rights in these inventions have been assigned to the Government of the United States of America.

The prospective co-exclusive license territory may be ''worldwide,'' and the field of use may be limited to the following:

Devices, systems, kits and related consumables, and methods using device, systems, kits and related consumables, for micro-dissection of biological specimens, as covered by the Licensed Patent Right. Excluded from the exclusive field of use are (1) methods, kits, and related consumables that are used independent of the devices or systems by individual researchers employed at non-profit and academic institutions, if such kits were built by the researchers themselves from component parts and used for their own individual research purposes, and (2) diagnostic services performed using devices, systems, kits and related consumables purchased from Ventana or Ventana's authorized distributor(s) by those persons employed at non-profit and academic institutions that purchased the devices, systems, kits and related consumables used in the diagnostic services, shall not infringe Ventana's rights.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before April 9, 2014 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated co-exclusive license should be directed to: Kevin W. Chang, Ph.D., Senior Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5018; Facsimile: (301) 402–0220; Email: *changke@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The subject technologies are methods, devices, and kits for target activated transfer of a target from a biological sample such as a tissue section, comprising: Contacting the biological sample with a reagent that selectively acts on the target within the biological sample; placing a transfer surface adjacent the biological sample, wherein the reagent produces a change in the transfer surface by heating the target; heating the target to produce a change in the transfer surface and selectively adhere the target to the transfer surface, or to selectively increase permeability of the transfer surface to the target; and selectively removing the target from the biological sample by removing the transfer surface and the adhered target from the biological sample, or by moving the target through the transfer surface.

The prospective co-exclusive commercial license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR Part 404. The prospective co-exclusive commercial license may be granted unless within fifteen (15) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR Part 404.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated co-exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: March 19, 2014.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2014–06413 Filed 3–24–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Development of T Cell Receptors for Adoptive Transfer in Humans to Treat Cancer

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209 and 37 CFR 404, that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to Kite Pharma, Inc., which is located in Los Angeles, California to practice the inventions embodied in the following patent applications:

1. U.S. Provisional Patent Application No. 61/650,020 filed May 22, 2012 entitled ''Murine anti-NY–ESO–1 T cell receptors'' (HHS Ref No. E–105–2012/0–US–01) and
2. PCT Application No. PCT/US13/042162 filed May 22, 2013 entitled ''Murine anti-NY–ESO–1 T cell receptors'' (HHS Ref No. E–105–2012/0–PCT–02)

The patent rights in these inventions have been assigned to the United States of America. The prospective exclusive license territory may be worldwide and the field of use may be limited to the development, manufacture, distribution, sale, and use of the compositions and methods set forth in the Licensed Patent Rights using genetically engineered autologous T lymphocytes derived from the peripheral blood of humans for the treatment of NY–ESO–1-expressing cancers.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before April 24, 2014 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated exclusive license should be directed to: Whitney A. Hastings, Ph.D., Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 451–7337; Facsimile: (301) 402–0220; Email: *hastingw@mail.nih.gov*.

SUPPLEMENTARY INFORMATION: The instant technology describes a T cell receptor (TCR) derived from mouse T cells (i.e. murine TCR) that can be expressed in human T cells to recognize the cancer testis antigen (CTA), NY–ESO–1, with high specificity. This anti-NY–ESO–1 TCR has murine variable regions that recognize the NY–ESO–1 epitope and murine constant regions. The inventors performed in vitro studies comparing this murine NY–ESO–1 TCR with a previously developed human NY–ESO–1 TCR counterpart, which yielded promising clinical outcomes in patients with a variety of cancers. The murine TCR functioned similarly to the human counterpart in their ability to recognize and react to NY–ESO–1 tumor targets.

NY–ESO–1 is a CTA, which is expressed only on tumor cells and germline cells of the testis and placenta. CTAs are ideal targets for developing cancer immunotherapeutics, such as anti-CTA TCRs, because these TCRs are expected to target cancer cells without harming normal tissues and thereby minimize the harsh side effects associated with other types of cancer treatment. NY–ESO–1 is expressed on a wide variety of cancers, including but not limited to breast, lung, prostate, thyroid, and ovarian cancers, melanoma, and synovial sarcomas. Thus, this technology should be applicable in adoptive cell transfer therapies for many types of cancer.

The prospective exclusive license, subject to current non-exclusive license applications under consideration and any further license applications received as objections to this Notice of Intent to Grant an Exclusive License, will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license may be granted unless within thirty (30) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Any additional applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: March 20, 2014.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2014–06412 Filed 3–24–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR part 404 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Discovery of Novel PARP Inhibitors That Synergize With Topoisomerase I Inhibitors for Cancer Treatment

Description of Technology: Scientists at the NCI discovered new inhibitors of poly ADP ribose polymerase (PARP). These inhibitors can synergize with topoisomerase I (Top 1) inhibitors, such as camptothecin (CPT), as well as with other cancer therapeutic agents, such as DNA alkylating agents (temozolomide), to enhance the efficacy of current anticancer treatments. The mechanism of action is inhibition of DNA repair mechanism. PARP is a partner of trosyl-DNA phosphodiesterase I (TDP1), a DNA repair enzyme inside the XRCC1 multiprotein-DNA repair complex.

Potential Commercial Applications:

- Used in combination therapy with approved cancer therapeutic agents
- Treatment for BRCA- and homologous repair-deficient cancers

Competitive Advantages: Should boost the efficacy of current anti-cancer treatments

Development Stage: In vitro data available

Inventors: Chrisophe R. Marchand, J. Murai, Yves G. Pommier (all of NCI)

Publications:

1. Maxwell KN, Domchek SM. Cancer treatment according to BRCA1 and BRCA2 mutations. Nat Rev Clin Oncol. 2012 Sep;9(9):520–8. [PMID 22825375]
2. Marchetti C, *et al.* Olaparib, PARP1 inhibitor in ovarian cancer. Expert Opin Investig Drugs. 2012 Oct;21(10):1575–84. [PMID 22788971]
3. Ellisen LW. PARP inhibitors in cancer therapy: Promise, progress and puzzles. Cancer Cell. 2011 Feb 15; 19(2):165–7. [PMID 21316599]
4. Papeo G, et al. Poly(ADP-ribose) polymerase inhibition in cancer therapy: Are we close to maturity? Expert Opin Ther Pat. 2009 Oct;19(10):1377–400. [PMID 19743897]

Intellectual Property: HHS Reference No. E–075–2014/0—Research Tool. Patent protection is not being pursued for this technology.

Related Technology: HHS Reference No. E–199–2010/0—US Patent Application No. 13/293,282 filed 27 Oct 2011 (allowed)

Licensing Contact: Uri Reichman, Ph.D., MBA; 301–435–4616; ur7a@nih.gov

Deconvolution Software for Modern Fluorescence Microscopy

Description of Technology: This software invention pertains to Joint Richardson-Lucy (RL) deconvolution methods used to combine multiple images of an object into a single image for improving resolution in modern fluorescence microscopy. RL deconvolution merges images with very different point spread functions, such as in multi-view light-sheet microscopes, while preserving the best resolution information present in each image. RL deconvolution is also easily applied to merge high-resolution, high noise

images with low-resolution, low noise images, relevant when complementing conventional microscopy with localization microscopy. The technique can be performed on images produced via different simulated illumination patterns, relevant to structured illumination microscopy (SIM) and image scanning microscopy (ISM) resulting in image qualities at least as good as standard inversion algorithms, but follows a simpler protocol that requires little mathematical insight. RL deconvolution can also be used to merge a series of several images with varying signal and resolution levels. This combination is relevant to gated stimulated-emission depletion (STED) microscopy and shows that high-quality image merges are possible even in cases where no explicit inversion algorithm is known.

Potential Commercial Applications: Microscopy

Competitive Advantages: High image precision for fast moving samples

Development Stage:

- Early-stage
- In vitro data available

Inventors: George H. Patterson, Maria DM Ingaramo, Andrew York, Hari Shroff (all of NIBIB)

Publications:

1. Richardson, William Hadley. Bayesian-Based Iterative Method of Image Restoration. J Opt Soc Am. 1972;62 (1): 55–9. [*http://dx.doi.org/10.1364/JOSA.62.000055*]
2. Wu Y, et al. Volumetric Isotropic Imaging with Dual-view Plane Illumination Microscopy. Nat Biotechnol., in press.
3. Lucy LB. An iterative technique for the rectification of observed distributions. Astron J. 1974;79(6):745–54. [*http://dx.doi.org/10.1086/111605*]

Intellectual Property: HHS Reference No. E–038–2014/0—Software Materials. Patent protection is not being pursued for this technology.

Related Technologies: HHS Reference No. E–005–2012/2—PCT Application No. PCT/US2013/27413 filed 22 Feb 2013, which published as WO 2013/126762 on 29 Aug 2013 (claiming priority to 23 Feb 2012)

Licensing Contact: Michael Shmilovich, Esq.; 301–435–5019; *shmilovm@mail.nih.gov*

Collaborative Research Opportunity: The National Institute of Biomedical Imaging and Bioengineering is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize Multifocal High Resolution Microscopy. For collaboration opportunities, please contact Henry Eden, M.D., Ph.D. at *edenh@mail.nih.gov* or 301–435–1953.

Human Influenza Virus Real-Time RT–PCR: Detection and Discrimination of Influenza A (H3N2) Variant From Seasonal Influenza A (H3N2) Viruses, Including H3v and Seasonal H3 Assays

Description of Technology: This invention relates to methods of rapidly detecting influenza, including differentiating between type and subtype. CDC researchers have developed a rapid, accurate, real-time RT–PCR assay that has several advantages over culture and serological tests, which require 5 to 14 days for completion; this assay can also be easily implemented in kit form. To date, hundreds of human cases of infection with the H3N2 variant virus have been confirmed. The increased numbers of human infection of H3N2 variant virus has led to a need for a highly sensitive and specific assay for the diagnosis and confirmation of the H3N2 variant virus.

Potential Commercial Applications:

- Influenza diagnostic using clinical specimens
- High-throughput sample screening
- Government, regional influenza surveillance programs

Competitive Advantages:

- Especially useful for H3N2 screening
- Sensitive detection
- Specific discrimination of influenza subtypes
- Easily formatted as kit or array
- Faster than culturing and serological identification methods
- Less laborious and more objective than immunoassays

Development Stage: In vitro data available

Inventors: Bo Shu, Stephen Lindstrom, Kai-Hui Wu, LaShondra Berman (all of CDC)

Publications:

1. Lindstrom S, et al. Human infections with novel reassortant influenza A(H3N2)v viruses, United States, 2011. Emerg Infect Dis. 2012 May;18(5):834–7. [PMID 22516540]
2. Cox CM, et al. Swine influenza virus A (H3N2) infection in human, Kansas, USA, 2009. Emerg Infect Dis. 2011 Jun;17(6):1143–4. [PMID 21749798]
3. Jhung MA, et al. Outbreak of variant influenza A(H3N2) virus in the United States. Clin Infect Dis. 2013 Dec;57(12):1703–12. [PMID 24065322]

Intellectual Property: HHS Reference No. E–562–2013/0—US Patent Application No. 61/894,291 filed 22 Oct 2013

Related Technologies:

- HHS Reference No. E–274–2013/0
- HHS Reference No. E–331–2013/0

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov*

Improved Methods To Measure Hyaluronan Acid

Description of Technology: The invention is directed to an improved method for measuring the amount of hyaluronan acid (HA) in a biological sample using an ELISA based system. HA is a disaccharide polymer that is expressed at elevated levels in patients afflicted with certain autoimmune diseases, including Graves' ophthalmopathy and rheumatoid arthritis. The amount and the length of HA present in a patient sample varies.

When compared to existing assays, the invention assay provides a more accurate and sensitive way to measure HA. Specifically, the first step in the invention assay involves determining the size range of the average molecular weight of HA in the sample. Next, the amount of HA in the sample is quantified using an ELISA system wherein HA binds to hyaluronan binding protein (HABP). Then, the binding results are compared against a control sample containing HA at an average molecular weight similar to that of HA in the sample being tested. Thus, the invention assay takes into account two variables that lead to significant errors in calculating the concentration of HA in a biological sample: (1) The wide range of HA particle sizes in a sample, and (2) differing binding efficiencies between HABP and HA at different particle sizes.

Potential Commercial Applications:

- Diagnostic Test
- Personalized Medicine

Competitive Advantages: More accurate and sensitive quantification of HA in biological samples when compared to commercially available ELISA kits.

Development Stage:

- Early-stage
- In vitro data available
- Prototype

Inventors: Marvin C. Gershengorn and Christine C. Krieger (NIDDK)

Publication:

Krieger CC, Gershengorn MC. A modified ELISA accurately measures secretion of high molecular weight hyaluronan (HA) by Graves' disease orbital cells. Endocrinology. 2014 Feb;155(2):627–34. [PMID 24302624]

Intellectual Property: HHS Reference No. E–538–2013/0–US–01—US Application No. 61/860,722 filed 31 Jul 2013

Licensing Contact: Lauren Nguyen-Antczak, Ph.D., J.D.; 301–435–4074; *lauren.nguyen-antczak@nih.gov*

Human iPSC-Derived Mesodermal Precursor Cells and Differentiated Cells

Description of Technology: Cells, cell culture methods, and cell culture media compositions useful for producing and maintaining iPSC-derived cell lines that are of higher purity and maintain cell type integrity better than current iPSC-derived cell lines are disclosed. Human induced pluripotent stem cells (hiPSCs) can be generated by reprogramming somatic cells by the expression of four transcription factors. The hiPSCs exhibit similar properties to human embryonic stem cells, including the ability to self-renew and differentiate into all three embryonic germ layers: Ectoderm, endoderm, or mesoderm. Human iPSCs can be induced into any cell type and, since they can be maintained over many passages, they can serve as an almost unlimited source to generate cells from any given person. These properties make iPSC-derived cells a valuable product for cell therapies and toxicology or pharmaceutical high throughput screens. NIH investigators disclose an iPSC-derived mesodermal precursor cell line, positive for CD34 and CD31 expression, that may be used to produce at least four different cell types. When cultured under appropriate conditions, these mesodermal precursor cells can be used to produce hematopoietic stem cells, mesenchymal stem cells, smooth muscle cells, or unlimited functional endothelial cells.

Potential Commercial Applications:

- The iPSC-derived mesodermal precursor cell (MPC) line described here can be used to produce hematopoietic stem cells, mesenchymal stem cells, smooth muscle cells, or unlimited functional endothelial cells.
- The differentiated cells produced using the disclosed methods and MPC can be used for screening, as well as therapeutic applications.

Competitive Advantages: The mesodermal precursor cells have the ability to maintain their phenotype for extended periods without differentiating, when maintained under appropriate conditions.

Development Stage:

- Early-stage
- In vitro data available
- In vivo data available (animal)

Inventors: Drs. Manfred Boehm (NHLBI), Guibin Chen (NHLBI), Mahendra Rao (NIAMS), and André Larochelle (NHLBI)

Intellectual Property: HHS Reference No. E–342–2013/0—US Provisional Application No. 61/885,209 filed 01 Oct 2013

Related Technologies:

- HHS Reference No. E–762–2013/0—US Provisional Application No. 61/904,999 filed 15 Nov 2013
- HHS Reference No. E–763–2013/0—US Provisional Application No. 61/905,002 filed 15 Nov 2013

Licensing Contact: Sury Vepa, Ph.D., J.D.; 301–435–5020; *vepas@mail.nih.gov*

Collaborative Research Opportunity: The National Heart, Lung, and Blood Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize this technology. For collaboration opportunities, please contact Denise Crooks at *crooksd@nhlbi.nih.gov*.

Silica Exposure Safety: Mini-Baghouse Systems and Methods for Controlling Particulate Release From Large Sand Transfer Equipment

Description of Technology: CDC scientists have developed an effective control for release of silica-containing dusts by using retrofitted mini baghouses for thief hatches on sand transfer trucks. Retrofit of the mini baghouses on sand transfer trucks will significantly reduce silica dust release and silica exposures in the workplace and surrounding community.

In the U.S., virtually every new oil and gas well is hydraulically fractured (HF) to stimulate well production. Each HF operation has 2–4 sand transfer trucks in use, and tens of thousands of pounds of sand are used for each stage of each multi-stage fracturing. Currently, there are no truck-mounted engineering controls for silica release at HF operations, posing an elevated risk of silica exposure to personnel and surrounding areas. CDC results have shown that silica workplace exposures at HF sites are completely uncontrolled at present (with the exception of personal respirator use), and silica exposures are likely to be the most significant and hazardous occupational chemical exposure on HF sites. Additionally, CDC field research has shown that personal breathing zone silica concentrations regularly exceed the maximum use concentration for both half-mask and full-face air purifying respirators. Use of this mini baghouse technology (multiple mini baghouse retrofits to sand trucks) will serve to limit release of silica dust, thereby diminishing silica exposure and increasing safety.

Potential Commercial Applications:

- Controlling occupational exposure to silica, especially for work involving sand transfer trucks
- Retrofitting currently operating heavy equipment
- Gas and oil well-workers' well-being concern groups
- Hydraulic fracturing operations situated near populated areas and associated insurers
- Occupationally-mandated pneumoconiosis, and/or silicosis prevention programs for complying with safety regulations

Competitive Advantages:

- Designed for retrofitting ''thief hatches'' of existing machinery
- This technology will reduce silica exposure near hydraulic fracturing sites, helping to diminish one of the most hazardous exposure risks of such operations
- Provides previously unavailable truck mounted engineering controls for silica release at hydraulic fracturing operations

Development Stage:

- In situ data available (on-site)
- Prototype

Inventors: Eric J. Esswein, Michael Breitenstein, John E. Snawder, Michael G. Gressel, Jerry L. Kratzer (all of CDC)

Intellectual Property: HHS Reference No. E–291–2013/0—US Application No. 13/802,265 filed 13 Mar 2013

Related Technologies:

- HHS Reference No. E–312–2013/0
- HHS Reference No. E–498–2013/0

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov.*

Dengue Vaccines: Tools for Redirecting the Immune Response for Safe, Efficacious Dengue Vaccination

Description of Technology: This CDC-developed invention relates to dengue vaccines that have been specifically developed for improved efficacy and directed immune response to avoid antibody-dependent enhancement (ADE) safety issues that, theoretically, may be associated with dengue vaccines and vaccinations. Dengue viral infection typically causes a debilitating but non-lethal illness in hosts. However, dengue hemorrhagic fever (DHF), the much more severe and life-threatening condition, is generally attributed to secondary dengue infections caused by a serotype different from the initial infection serotype by way of ADE. This effect, particularly notable in dengue viruses, should be given special consideration during vaccine design and construction.

This *in vivo*-validated technology provides a strategy and mechanism for increasing the safety of dengue vaccines and diminishing the likelihood of such

vaccines inadvertently harming a recipient due to ADE-mediated effects. Any safe, effective dengue vaccine must produce well-balanced and tetravalent (for all four dengue serotypes) protective immunity. Despite decades of investigative effort there remains no effective, commercially available dengue vaccine and the greatest hurdle has been the difficulty of rapidly inducing this balanced immunity to all four dengue serotypes.

With this invention, CDC researchers have developed a cross-reactivity reduced dengue serotype 1 (DENV–1) DNA vaccine engineered to directly address ADE-related vaccine safety concerns. *In vivo* murine testing of wild-type and cross-reactivity-reduced vaccines demonstrated that this theoretical vaccine safety concern is real and that the cross-reactivity reduced DNA vaccine dramatically reduces dengue vaccination safety risk while increasing protective antibody responses. Properly developed and implemented, this novel vaccination strategy should help overcome this previously-unaddressed hindrance to dengue vaccine development.

Potential Commercial Applications:

- Creation of a safe, efficacious and well-balanced dengue virus vaccine
- Improving currently developed/developing dengue vaccines to mitigate potential antibody-dependent enhancement safety issues
- Research tools for vaccine development programs for other flaviviruses, HIV

Competitive Advantages:

- Murine in vivo studies indicating proof-of-principle, safety and efficacy
- Addresses a long-standing ''serotype immunity balancing'' issue for dengue vaccine development
- Presently there are no safe, effective commercially available dengue vaccines

Development Stage:

- In vitro data available
- In vivo data available (animal)

Inventors: Gwong-Jen Chang, Wayne Crill, Holly Hughes, Brent Davis (all of CDC)

Publication:

Crill WD, *et al.* Sculpting humoral immunity through dengue vaccination to enhance protective immunity. Front Immunol. 2012 Nov 8;3:334. [PMID 23162552]

Intellectual Property: HHS Reference No. E–289–2013/0–

- US Application No. 61/549,348 filed 20 Oct 2011
- PCT Application No. PCT/US2013/060872 filed 18 Oct 2012

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov.*

Dated: March 19, 2014.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2014–06404 Filed 3–24–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

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

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

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Addressing Health Disparities in NIDDK Diseases.

Date: April 4, 2014.

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

Agenda: To review and evaluate grant applications.

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

Contact Person: Carol J. Goter-Robinson, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov*.

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

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, U01 Coordinating Center.

Date: April 22, 2014.

Time: 1:00 p.m. to 2:45 p.m.

Agenda: To review and evaluate grant applications.

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

Contact Person: Maria E. Davila-Bloom, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov*.

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

Date: May 7, 2014.

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

Agenda: To review and evaluate grant applications.

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

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

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

Dated: March 18, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–06411 Filed 3–24–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

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

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

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neuroscience.

Date: April 8, 2014.

Time: 10:00 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

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

Contact Person: Toby Behar, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7850, Bethesda, MD 20892, (301) 435–4433, *behart@csr.nih.gov*.

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

Date: April 10, 2014.

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

Agenda: To review and evaluate grant applications.

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

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

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Adult Psychopathology and Disorders of Aging.

Date: April 11, 2014.

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

Agenda: To review and evaluate grant applications.

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

Contact Person: Andrea B. Kelly, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, (301) 455–1761, *kellya2@csr.nih.gov*.

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

Dated: March 18, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–06410 Filed 3–24–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

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

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

Name of Committee: National Cancer Institute Special Emphasis Panel Cancer Etiology (Omnibus).

Date: April 16–17, 2014.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, Room 5W030, 9609 Medical Center Drive, Rockville, MD 20850, (Telephone Conference Call).

Contact Person: Donald L Coppock, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W260, Bethesda, MD 20892–9750 240–276–6382 *donald.coppock@nih.gov*.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee A—Cancer Centers.

Date: May 9, 2014.

Time: 8:00 a.m. to 12:45 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Sonya Roberson, Ph.D., Scientific Review Officer, Resources And Training Review Branch, Division Of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center, Room 7W116, BETHESDA, MD 20892–9750, 240–276–6347 *robersos@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, Cancer Center Support Grant.

Date: May 9, 2014.

Time: 1:45 p.m. to 3:15 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Lynn M. Amende, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W112, Bethesda, MD 20892–9750, 240–276–6345 *amendel@mail.nih.gov*.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/irg/irg.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 18, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–06405 Filed 3–24–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

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

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

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Loan Repayment Program Review Panel.

Date: April 14, 2014.

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

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Xincheng Zheng, MD, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, NIH, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20892, (301) 594–4953, *xincheng.zheng@nih.gov*.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Biomarker Platform Small Business Review.

Date: April 15, 2014.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Charles H. Washabaugh, Ph.D., Scientific Review Officer, Scientific

Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, NIH, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20892 (301) 496–9568, *washabac@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 18, 2014.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–06408 Filed 3–24–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

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

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

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

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel: ZAA1 GG (02) Cooperative Agreement (U01) Grant Application Review.

Date: April 29, 2014.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

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

Contact Person: Richard A. Rippe, Ph.D., Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Room 2109, Rockville, MD 20852, 301–443–8599, *rippera@mail.nih.gov.*

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

Dated: March 18, 2014.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–06418 Filed 3–24–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging Notice of Closed Meeting

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

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

Name of Committee: National Institute on Aging Special Emphasis Panel; Behavioral and Social Networks.

Date: April 14, 2014.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Isis S. Mikhail, MD, MPH, DRPH, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7702, *mikhaili@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 18, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–06407 Filed 3–24–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

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

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

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Serious Mental Illness.

Date: April 8, 2014.

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

Agenda: To review and evaluate grant applications.

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

Contact Person: Aileen Schulte, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS).

Dated: March 18, 2014.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–06409 Filed 3–24–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3369–EM; Docket ID FEMA–2014–0003]

South Carolina; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of South Carolina (FEMA–3369–EM), dated February 12, 2014, and related determinations.

DATES: *Effective Date:* February 12, 2014.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 12, 2014, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency

Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of South Carolina resulting from a severe winter storm beginning on February 10, 2014, and continuing are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of South Carolina.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Joe M. Girot, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of South Carolina have been designated as adversely affected by this declared emergency:

All counties in the State of South Carolina for emergency protective measures (Category B), limited to direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–06521 Filed 3–24–14; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3368–EM; Docket ID FEMA–2014–0003]

Georgia; Amendment No. 3 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Georgia (FEMA–3368–EM), dated February 11, 2014, and related determinations.

DATES: *Effective Date:* February 14, 2014.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective February 14, 2014.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–06517 Filed 3–24–14; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2012–0012]

National Flood Insurance Program Programmatic Environmental Impact Statement Scoping Meeting Dates

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Notice of Intent to prepare an Environmental Impact Statement on the Federal Emergency Management Agency's (FEMA) National Flood Insurance Program (NFIP) was published in the May 16, 2012 **Federal Register** at 77 FR 28891, and requested public comments no later than July 16, 2012. Thirty-nine comments were received.

Due to the extenuating circumstances caused by the passage of a 5-year NFIP reauthorization (See Biggert-Waters Flood Insurance Reform Act of 2012, Pub. L. 112–141, 126 Stat. 405), interested parties requested an extension of the initial comment period. FEMA reopened the comment period for submitting public comments to October 9, 2012, for Docket ID FEMA–2012–0012 through publication in the **Federal Register** at 77 FR 50706 on August 22, 2012. Two comments were received. The comments received as part of the NOI will be considered in the preparation of this PEIS.

This notice sets forth the dates of public scoping meetings FEMA intends to hold online, as Webinars, to inform the public about FEMA's intended PEIS process and receive additional comments from the public. Information on the NFIP PEIS and instructions for online webinar registration is available on the project Web site at: *https://www.fema.gov/programmatic-environmental-impact-statement.*

DATES AND LOCATIONS: The meetings will take place online, as webinars, and will be held on April 22, 2014, from 2:00 to 4:00 p.m. eastern standard time (EST); May 13, 2014, from 4:00 to 6:00 p.m. EST; and May 20, 2014, from 4:00 to 6:00 p.m. EST.

FOR FURTHER INFORMATION CONTACT: *For information about how to register for the webinar or for further information on FEMA's PEIS, contact:* Beth Norton, Federal Emergency Management Agency, Federal Insurance and Mitigation Administration, Risk Reduction Division, Floodplain Management Branch, 1800 South Bell

Street, 9th Floor, Arlington, VA 20598–3030. Phone: (202) 646–2716 or via email at *Beth.Norton@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: FEMA is developing a Programmatic Environmental Impact Statement (PEIS) of the NFIP to consider the environmental impacts of the NFIP as it is currently implemented, to update the 1976 EIS on the NFIP, and to consider potential changes to the Program's implementation. Public scoping meetings in the format of online webinars will assist FEMA in determining the scope of issues to be addressed in the NFIP PEIS and for identifying significant issues related to a proposed action.

The Federal Insurance and Mitigation Administration (FIMA), a component of FEMA, administers the NFIP. The three primary components of the NFIP are Flood Insurance, Floodplain Management, and Flood Hazard Mapping. More than 22,000 communities across the United States and its territories participate in the NFIP by adopting and enforcing floodplain management ordinances to reduce future flood damages as a condition for the availability of Federal flood insurance.

In addition to making Federal flood insurance available and reducing flood damages through floodplain management regulations, the NFIP identifies and maps the Nation's floodplains. Mapping flood hazards creates a broad-based awareness of flood hazards and risks, provides data needed for effective floodplain management programs, and enables FEMA to identify actuarial rates for flood insurance premiums.

The NFIP has been evaluated and modified several times, most recently by the Biggert-Waters Flood Insurance Reform Act of 2012 (BW–12), which was signed into law on July 6, 2012 and which provides for a significant reform of the NFIP and extends the program through September 30, 2017. Implementation of legislative revisions since the initial National Flood Insurance Act of 1968, including BW–12, the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, and the Flood Disaster Reform Act of 1973, administrative programmatic initiatives, public input received on the 2012 Notice of Intent, and comments received during the online webinars will be used to develop the PEIS.

FEMA has developed a Purpose and Need statement for evaluating NFIP proposed action and alternatives which was published in the 2012 NOI and can be viewed at *http://www.regulations.gov/* under Docket ID FEMA–2012–0012. The Purpose and Need statement will include a No Action option that will analyze the Program as it stands today to include program changes that have taken place since the 1976 *Programmatic Environmental Impact Statement for the Revised Floodplain Management Regulations of the National Flood Insurance Program.* The Proposed Action is intended to enhance programmatic efficiency and effectiveness in a manner that will reduce unsound development in the floodplain and protect environmentally sensitive areas.

The PEIS will analyze a range of reasonable alternatives in order to consider the impacts of the Proposed Action on all resource areas required under NEPA at a nationwide, programmatic level, and will perform additional, more site-specific analysis to support and illustrate the conclusions of the programmatic level analysis. A list of draft alternatives for consideration was published in the 2012 NOI and can be viewed at *http://www.regulations.gov/* under Docket ID FEMA–2010–0065. Each alternative analyzed will consist of enhanced program standards for each of the three primary elements of the NFIP: mapping, floodplain management, and insurance to consider as part of proposed modifications.

FEMA also intends to initiate discussions with other Federal agencies on the scope of this effort and identify cooperating agencies interested in participating as such in this process. FEMA intends to work with the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) to comply with the Endangered Species Act. FEMA also intends to work with the USFWS to comply with the Fish and Wildlife Coordination Act.

FEMA has received comments from the May 16, 2012 Notice of Intent (77 FR 28891–28893) and the August 22, 2012 extension of public comment period (77 FR 50706) issued for the preparation of a PEIS for the Program. These comments and any additional comments received during the online webinars will be considered in the preparation of this PEIS.

Any additional meetings will be announced on the project Web site at: *https://www.fema.gov/programmatic-environmental-impact-statement.*

Authority: National Environmental Policy Act (NEPA), as amended, 42 U.S.C. 4331 et seq.; 40 CFR part 1500; 44 CFR part 10.

Dated: March 19, 2014.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2014–06525 Filed 3–24–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0002; Internal Agency Docket No. FEMA–B–1409]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR Part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard

determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR Part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of Letter of Map Revision	Effective date of modification	Community No.
Arizona:						
Maricopa	Town of Cave Creek (13–09–2950P).	The Honorable Vincent Francia, Mayor, Town of Cave Creek, 37622 North Cave Creek Road, Cave Creek, AZ 85331.	37622 North Cave Creek Road, Cave Creek, AZ 85331.	*http://www.msc.fema.gov/lomc*	May 5, 2014	040129
Maricopa	Unincorporated areas of Maricopa County (13–09–2950P).	The Honorable Steve Chucri, Supervisor, District 2, Maricopa County, 301 West Jefferson, 10th Floor, Phoenix, AZ 85003.	2801 West Durango Street, Phoenix, AZ 85003.	*http://www.msc.fema.gov/lomc*	May 5, 2014	040037
California: San Bernardino.	City of Yucaipa (13–09–1511P).	The Honorable Denise Hoyt, Mayor, City of Yucaipa, 34272 Yucaipa Boulevard, Yucaipa, CA 92399.	34272 Yucaipa Boulevard, Yucaipa, CA 92399.	*http://www.msc.fema.gov/lomc*	April 4, 2014	060739
Connecticut:						
New Haven	City of West Haven (13–01–2240P).	The Honorable John M. Picard, Mayor, City of West Haven, 355 Main Street, West Haven, CT 06516.	City Hall, 355 Main Street, West Haven, CT 06516.	*http://www.msc.fema.gov/lomc*	May 29, 2014	090092
Fairfield	Town of Greenwich (13–01–2161P).	The Honorable Peter Tesei, First Selectman, Town of Greenwich, 101 Field Point Road, Greenwich, CT 06830.	Town Hall, 101 Field Point Road, Greenwich, CT 06830.	*http://www.msc.fema.gov/lomc*	April 11, 2014	090008
Idaho: Blaine	Unincorporated areas of Blaine County (12–10–1241P).	The Honorable Lawrence Schoen, Blain County Chairman, Board of Commissioners, 206 First Avenue South, Suite 300, Hailey, ID 83333.	Blaine County Planning & Zoning, 219 First Avenue South, Suite 208, Hailey, ID 83333.	*http://www.msc.fema.gov/lomc*	April 3, 2014	165167
Illinois:						
DuPage	Village of Woodridge (13–05–5378P).	The Honorable Gina Cunningham-Pic, 5 Plaza Drive, Woodridge, IL 60517.	Village Hall, 5 Plaza Drive, Woodridge, IL 60517.	*http://www.msc.fema.gov/lomc*	May 2, 2014	170737
Will	Village of Bolingbrook (13–05–5378P).	The Honorable Roger C. Claar, Mayor, Village of Bolingbrook, 375 West Briarcliff Road, Bolingbrook, IL, 60440.	Village Hall, 375 West Briarcliff Road, Bolingbrook, IL, 60440.	*http://www.msc.fema.gov/lomc*	May 2, 2014	170812

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of Letter of Map Revision	Effective date of modification	Community No.
Will	City of Naperville (13–05–8584P).	The Honorable A. George Pradel, Mayor, City of Naperville, 400 South Eagle Street, Naperville, IL 60540.	City Hall, 400 South Eagle Street, Naperville, IL 60540.	*http://www.msc.fema.gov/lomc*	May 12, 2014	170213
Will	Unincorporated areas of Will County (13–05–8584P).	The Honorable Lawrence M. Walsh, Will County Chairman, 302 North Chicago Street, Joliet, IL 60432.	Will County Land Use, 58 East Clinton Street, Suite 500, Joliet, IL 60432.	*http://www.msc.fema.gov/lomc*	May 12, 2014	170695
Will	City of Naperville (13–05–3255P).	The Honorable A. George Pradel, Mayor, City of Naperville, 400 South Eagle Street, Naperville, IL 60540.	City Hall, 400 South Eagle Street, Naperville, IL 60540.	*http://www.msc.fema.gov/lomc*	April 28, 2014	170213
Will	Unincorporated areas of Will County (13–05–3255P).	The Honorable Lawrence M. Walsh, Will County Chairman, 302 North Chicago Street, Joliet, IL 60432.	Will County Land Use, 58 East Clinton Street, Suite 500, Joliet, IL 60432.	*http://www.msc.fema.gov/lomc*	April 28, 2014	170695
Adams	City of Quincy (13–05–7063).	The Honorable Kyle A. Moore, Mayor, City of Quincy, 730 Maine Street, Quincy, IL 62301.	Quincy City Hall, 730 Maine Street, Quincy, IL 62301.	*http://www.msc.fema.gov/lomc*	March 18, 2014	170003
Adams	Unincorporated areas of Adams County (13–05–7063P).	The Honorable Les Post, 101 North 54th Street, Quincy, IL 62305.	Adams County Highway Department, 101 North 54th Street, Quincy, IL 62305.	*http://www.msc.fema.gov/lomc*	March 18, 2014	170001
Indiana: Hamilton	Town of Sheridan (13–05–7380P).	The Honorable David W. Kinkead, Council President, Town of Sheridan, 506 South Main Street, Sheridan, IN 46069.	506 South Main Street, Sheridan, IN 46069.	*http://www.msc.fema.gov/lomc*	May 13, 2014	180516
Iowa:						
Black Hawk	City of Cedar Falls (13–07–0495P).	The Honorable Jon Crews, 220 Clay Street, Cedar Falls, IA 50613.	Community Map Repository, 220 Clay Street, Cedar Falls, IA 50613.	*http://www.msc.fema.gov/lomc*	March 18, 2014	190017
Jefferson	City of Fairfield (13–07–1849P).	The Honorable Ed Malloy, Mayor, City of Fairfield, 118 South Main, Fairfield, IA 52556.	118 South Main, Fairfield, IA 52556.	*http://www.msc.fema.gov/lomc*	May 30, 2014	190168
Linn County	City of Cedar Rapids (13–07–1848P).	The Honorable Ron Corbett, 101 First Street SE, Cedar Rapids, IA 52401.	500 15th Avenue SW, Cedar Rapids, IA 52404.	*http://www.msc.fema.gov/lomc*	March 16, 2014	190187
Kansas:						
Sedgwick	Unincorporated areas of Sedgwick County (13–07–1822P).	The Honorable James Skelton, Commissioner, 5TH District of Sedgwick County, 525 North Main, Suite 320, Wichita, KS 67203.	Office of Storm Water, Management, 455 North Main, 8TH Floor, Wichita, KS 67202.	*http://www.msc.fema.gov/lomc*	June 19, 2014	200321
Sedgwick	City of Wichita (13–07–1822P).	The Honorable Carl Brewer, Mayor, City of Wichita, 455 North Main, 1ST Floor, Wichita, KS 67202.	Code Enforcement Office, 144 South Seneca Street, Wichita, KS 67213.	*http://www.msc.fema.gov/lomc*	June 19, 2014	200328
Maine: Cumberland	City of Portland (13–01–1727P).	The Honorable Michael F. Brennan, Mayor, City of Portland, 389 Congress Street, Portland, ME 04101.	City Hall, 389 Congress Street, Portland, ME 04101.	*http://www.msc.fema.gov/lomc*	March 20, 2014	230051
Michigan: Ingham	Charter Township of Delhi (13–05–4699P).	The Honorable C.J. Davis, Supervisor, Charter Township of Delhi, 2074 Aurelius Road, Holt, MI 48842.	2074 Aurelius Road, Holt, MI 48842.	*http://www.msc.fema.gov/lomc*	May 5, 2014	260088
Minnesota:						
Ramsey	City of Arden Hills (13–05–5828P).	The Honorable Stan Harpstead, Mayor, City of Arden Hills, 1245 West Highway 96, Arden Hills, MN 55112.	1245 West Highway 96, Arden Hills, MN 55112.	*http://www.msc.fema.gov/lomc*	May 01, 2014	270375
Washington	City of Oakdale (14–05–1498P).	The Honorable Carmen Sarrack, Mayor, City of Oakdale, 1584 Hadley Avenue North, Oakdale, MN 55128.	1584 Hadley Avenue North, Oakdale, MN 55128.	*http://www.msc.fema.gov/lomc*	May 15, 2014	270511
Nebraska: Buffalo	City of Ravenna (13–07–2384P).	The Honorable Peg R. Dethlefs, Mayor, City of Ravenna, 416 Grand Avenue, Ravenna, NE 68869.	416 Grand Avenue, Ravenna, NE 68869.	*http://www.msc.fema.gov/lomc*	May 12, 2014	310018

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of Letter of Map Revision	Effective date of modification	Community No.
Ohio:						
Cuyahoga	City of Solon (13–05–5208P).	The Honorable Susan A. Drucker, Mayor, City of Solon, 34200 Bainbridge Road, Solon, OH 44139.	34200 Bainbridge Road, Solon, OH 44139.	*http://www.msc.fema.gov/lomc*	January 03, 2014.	390130
Lucas	City of Toledo (13–05–0687P).	The Honorable Michael P. Bell, Mayor, City of Toledo, One Government Center, 640 Jackson Street, Suite 2200, Toledo, OH 43604.	Division of Engineering Services, 1 Lake Erie Center, Suite 300, Toledo, OH 43604.	*http://www.msc.fema.gov/lomc*	December 13, 2013.	395373
Lucas	City of Toledo (13–05–0689P).	The Honorable Michael P. Bell, Mayor, City of Toledo, One Government Center, 640 Jackson Street, Suite 2200, Toledo, OH 43604.	Division of Engineering Services, 1 Lake Erie Center, Suite 300, Toledo, OH 43604.	*http://www.msc.fema.gov/lomc*	December 13, 2013.	395373
Franklin	Unincorporated areas of Franklin County (13–05–7936P).	The Honorable John O'Grady, Franklin County Commissioner, 373 South High Street, 26TH Floor, Columbus, OH 43215.	150 South Front Street, FSL Suite 10, Columbus, OH 43215.	*http://www.msc.fema.gov/lomc*	April 22, 2014	390167
Franklin	City of Columbus (13–05–6825P).	The Honorable Michael B. Coleman, Mayor, City of Columbus, 90 West Broad Street, 2nd Floor, Columbus, OH 43215.	1250 Fairwood Avenue, Columbus, OH 43206.	*http://www.msc.fema.gov/lomc*	April 17, 2014	390170
Stark	City of Louisville (13–05–2237P).	The Honorable Patricia A. Fallot, Mayor, City of Louisville, 215 South Mill Street, Louisville, OH 44641.	215 South Mill Street, Louisville, OH 44641.	*http://www.msc.fema.gov/lomc*	March 14, 2014	390516
Oregon:						
Clackamas	City of Portland (13–10–1438P).	The Honorable Charlie Hales, Mayor, City of Portland, 1221 SW 4th Avenue, Room 340, Portland, OR 97204.	City of Portland Bureau of Environmental Services, 1120 SW 5th Avenue, Suite 1000, Portland, OR 97204.	*http://www.msc.fema.gov/lomc*	May 29, 2014	410183
Jackson	City of Medford (13–10–0817P).	The Honorable Gary Wheeler, Mayor, City of Medford, 411 West 8th Street, Medford, OR 97501.	Lausmann Annex, 200 South Ivy Street, Room 277, Medford, OR 97501.	*http://www.msc.fema.gov/lomc*	April 10, 2014	410096
Marion	City of Salem (13–10–1443P).	The Honorable Anna M Peterson, 555 Liberty Street Southeast, Salem, OR 97301.	City Hall, 555 Liberty Street Southeast, Salem, OR 97301.	*http://www.msc.fema.gov/lomc*	April 11, 2014	410167
Marion	City of Aumsville (13–10–1209P).	The Honorable Harold White, Mayor, City of Aumsville, 595 Main Street, Aumsville, OR 97325.	City Hall, 595 Main Street, Aumsville, OR 97325.	*http://www.msc.fema.gov/lomc*	March 14, 2014	410155
Marion	Unincorporated areas of Marion County (13–10–1209P).	The Honorable Patti Milne, PO Box 14500, Salem, OR 97309.	Marion County Department of Planning, 5155 Silverton Road NE, Salem, OR 97305.	*http://www.msc.fema.gov/lomc*	March 14, 2014	410155
Jackson	City of Ashland (13–10–1570P).	The Honorable John Stromberg, Mayor, City of Ashton, 20 East Main Street, Ashland, OR 97520.	20 East Main Street, Ashland, OR 97520.	*http://www.msc.fema.gov/lomc*	March 18, 2014	410090
Rhode Island: Providence.	Town of Smithfield (13–01–1817P).	The Honorable Alberto J. LaGreca, Jr., President, Smithfield Town Council, 64 Farnum Pike, Smithfield, RI 02917.	Town Hall, 64 Farnum Pike, Smithfield, RI 02917.	*http://www.msc.fema.gov/lomc*	April 3, 2014	440025
Virginia:						
Wythe	Town of Wytheville (13–03–1765P).	The Honorable Trenton G. Crewe, Jr., Mayor, Town of Wytheville, 150 East Monroe Street, Wytheville, VA 24382.	150 East Monroe Street, Wytheville, VA 24382.	*http://www.msc.fema.gov/lomc*	May 15, 2014	510181
Wythe	Unincorporated areas of Wythe County (13–03–1765P).	The Honorable Danny C. McDaniel, Chair, Wythe County Board of Supervisors, 340 South 6th Street, Suite A, Wytheville, VA 24382.	340 South 6th Street, Suite A, Wytheville, VA 24382.	*http://www.msc.fema.gov/lomc*	May 15, 2014	510180

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of Letter of Map Revision	Effective date of modification	Community No.
Washington: King ..	City of Burien (14–10–0009P).	The Honorable Lucy Krakowiak, Mayor, City of Burien, 400 Southwest 152nd Street, Suite 300, Burien, WA 98166.	400 Southwest 152nd Street, Suite 300, Burien, WA 98166.	*http://www.msc.fema.gov/lomc*	June 16, 2014 ...	550321
Wisconsin:						
Outagamie	City of Appleton (13–05–7920P).	The Honorable Tim Hanna, Mayor, City of Appleton, 100 North Appleton Street, Appleton, WI 54911.	City Hall, 100 North Appleton Street, Appleton, WI 54911.	*http://www.msc.fema.gov/lomc*	June 5, 2014	555542
Fond Du Lac ..	City of Waupun (13–05–8521P).	The Honorable Jodi Steger, Mayor, City of Waupun, 201 East Main Street, Waupun, WI 53963.	201 East Main Street, Waupun, WI 53963.	*http://www.msc.fema.gov/lomc*	April 2, 2014	550108
Rock	City of Beloit (13–05–3956P).	The Honorable Larry N. Arft, City Manager, City of Beloit, 100 State Street, Beloit, WI 53511.	City Hall, 100 State Street, Beloit, WI 53511.	*http://www.msc.fema.gov/lomc*	April 1, 2014	555544
Sheboygan	City of Plymouth (13–05–5518P).	The Honorable Don Pohlman, Mayor, City of Plymouth, 128 Smith Street, Plymouth, WI 53073.	City Hall, 128 Smith Street, Plymouth, WI 53073.	*http://www.msc.fema.gov/lomc*	March 21, 2014	550428
Outagamie	Unincorporated areas of Outagamie County (13–05–7384P).	The Honorable Robert Paltzer, Jr., 410 South Walnut Street, Appleton, WI 54911.	County Administration Building, 410 South Walnut Street, Appleton, WI 54911.	*http://www.msc.fema.gov/lomc*	March 24, 2014	550302
Kenosha	City of Kenosha (13–05–8170P).	The Honorable Jim Kreuser, Kenosha County Executive, 1010 56th Street, Kenosha, WI 53140.	19600 75th Street, Kenosha, WI 53140.	*http://www.msc.fema.gov/lomc*	May 13, 2014	550523
Kenosha	Unincorporated areas of Kenosha County (13–05–8170P).	The Honorable Keith G. Bosman, Mayor, City of Kenosha, 625 52nd Street, Room 300, Kenosha, WI 53140.	625 52nd Street, Kenosha, WI 53140.	*http://www.msc.fema.gov/lomc*	May 13, 2014	550209
Brown	Village of Bellevue (13–05–5752P).	The Honorable Craig Beyl, President, Village of Bellevue, 2828 Allouez Avenue, Bellevue, WI 54311.	2828 Allouez Avenue, Bellevue, WI 54311.	*http://www.msc.fema.gov/lomc*	March 13, 2014	550627
Green Lake	Unincorporated areas of Green Lake County (13–05–7472P).	Mr. Alan K. Shute, Land Development Director, Green Lake County, 571 County Road, Suite A, Green Lake, WI 54971.	108 North Capron Street, Berlin, WI 54923.	*http://www.msc.fema.gov/lomc*	June 02, 2014 ...	550165
Green Lake	City of Markesan (13–05–7472P).	The Honorable Richard Slate, Mayor, City of Mareson, 150 South Bridge Street, Markesan, WI 53946.	150 South Bridge Street, Markesan, WI 53946.	*http://www.msc.fema.gov/lomc*	June 02, 2014 ...	550169

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: March 7, 2014.

Roy E. Wright,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2014–06514 Filed 3–24–14; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–31]

30-Day Notice of Proposed Information Collection: HUD Research, Evaluation, and Demonstration Cooperative Agreements

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date: April 24, 2014.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email

Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on December 30, 2013. Please note that this Notice combines two previous 60-Day Notices that were published as Application and Reporting requirements for this program (FR–5689–N–13 and FR–5689–N–14) that were published on the same day.

A. Overview of Information Collection

Title of Information Collection: HUD Research, Evaluation, and Demonstration Cooperative Agreements.

OMB Approval Number: Pending.

Type of Request New collection.

Form Number:

For the application phase, prospective applicants must respond to the Notice of Funding Availability published in the **Federal Register** in order to receive an award. They must, prior to award, complete the following submissions:

Application for Federal Assistance (Form SF–424)
Detailed Budget (Form HUD–424–CB)
Disclosure of Lobbying Activities, if required (Standard Form LLL)
Disclosure/Update Report (Form HUD–2880)
Acknowledgment of Application Receipt (Form HUD–2993)
Client Comments and Suggestions (Form HUD–2994)
Narrative, which must include: applicant and organizational qualifications and capacity; and for the selected scenarios the question to be answered, the research design, and the work plan
Resumes of researchers
Indirect cost rate agreement, if available.

For the reporting phase, no agency forms will be used. The quarterly reporting will be accomplished through a short narrative report and use of existing grant management systems.

Description of the need for the information and proposed use: HUD's Office of Policy Development and Research (PD&R) intends to establish cooperative agreements with qualified for-profit and nonprofit research organizations and universities to conduct research, demonstrations, and data analysis. HUD will issue a Notice of Funding Availability (NOFA) describing the cooperative research program and the criteria for applying for awards. To assess qualified organizations for cooperative research, PD&R must collect information about the qualifications and capacity of organizations that apply under the NOFA. After awards have been made, HUD needs to collect information to evaluate the ongoing performance under the cooperative agreements.

Respondents: Applicants will include: public or private nonprofit organizations or intermediaries, including institutions of higher education and area-wide planning organizations; for profit organizations; States, units of general local government, or Indian tribes; and public housing authorities. HUD anticipates that approximately 18 organizations will apply. Of those, HUD anticipates that approximately 8–10 organizations will be selected for cooperative agreement award and subject to ongoing reporting requirements to assess performance.

Estimated Number of Respondents: Approximately eighteen applicants, and between eight to ten awardees.

Estimated Number of Responses: Approximately eighteen applicants, and between eight to ten awardees responsible for ongoing reporting.

Frequency of Response: Approximately 18 applications for the NOFA. Quarterly reporting and other mandatory federal reporting and recordkeeping requirements for cooperative agreement awardees.

Average Hours per Response: For applications, an estimated average of 66.5 hours per respondent to prepare an application, including the narrative and the mandatory forms. Estimated at 36 labor hours annually for each awardee during the life of the agreement.

Total Estimated Burdens: The total estimated burden for application by all participants is 1,197 hours.

Respondents	Responses per respondent	Hours per response	Total hours
18 applicants Application narrative	1	60.0	1,080
18 applicants Application forms	1	6.5	117
n/a Paperwork burden	n/a	66.5	1,197

The total estimated burden for progress reporting by all awardees is estimated at 360 combined hours annually.

	Respondents	Responses per respondent-year	Hours per response	Total hours
Quarterly Reports	10 awardees	4	4	160
Other Reports	10 awardees	1	4	40
Recordkeeping	10 awardees	1	16	160
Annual paperwork burden	n/a	n/a	n/a	360

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35

Dated: March 20, 2014.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2014–06564 Filed 3–24–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–30]

30-Day Notice of Proposed Information Collection: Transfer and Consolidation of Public Housing Programs and Public Housing Agencies

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* April 24, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on January 17, 2014.

A. Overview of Information Collection

Title of Information Collection: Transfer and Consolidation of Public Housing Programs and Public Housing Agencies.

OMB Approval Number: 2577-New.

Type of Request: New collection.

Form Number: No form is used to collect this information. Forms collected with information incidental to this collection are: HUD–52190–A, HUD–53012–A, HUD 53012–B, HUD–52722, HUD–52723, HUD–51999, SF–1199A, HUD–27056, HUD–27054A, HUD–52540.

Description of the need for the information and proposed use: State legislatures or other local governing bodies may from time to time direct or agree that the public interest is best served if one public housing agency (PHA) cedes its public housing program to another PHA, or that two or more PHAs should be combined into one multijurisdictional PHA. This proposed information collection serves to protect HUD's several interests in either transaction: (1) Insuring the continued used of the property as public housing; (2) that HUD's interests are secured; and (3) that the operating and capital subsidies that HUD pays to support the operation and maintenance of public housing is properly paid to the correct PHA on behalf of the correct properties. In addition to submitting documentation to HUD, PHAs are required to make conforming changes to HUD's Public Housing Information Center (PIC).

Total Estimated Burdens

TOTAL BURDEN HOUR ESTIMATES FOR PHAS

Total number of public housing agencies/potential respondents	Number of transfer or consolidation actions	Number of respondents	Frequency of requirement*	X	Est. avg. time for requirement (hours)	=	Est. Annual burden (hours)
3,140	5	10	1		20		200
Subtotals:							
3,140	5	10	1		20		200

*The frequency shown assumes that the receiving or consolidated PHA makes one submission for all other PHAs involved in either the transfer or consolidation.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapters 35.

Dated: March 20, 2014.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2014–06558 Filed 3–24–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–29]

30-Day Notice of Proposed Information Collection: Mortgage Credit Analysis for Loan Guarantee Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* April 24, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on January 17, 2014.

A. Overview of Information Collection

Title of Information Collection: Mortgage Credit Analysis for Loan Guarantee Program.

OMB Approval Number: 2577–0200.

Type of Request: Revision of a currently approved collection.

Form Number: HUD–50127, HUD–50132

Description of the need for the information and proposed use: The information collected from lenders is used to determine a borrower's credit worthiness and ability to pay for a home loan as well as to ensure that lenders comply with the program requirements.

Respondents (i.e. affected public): 6,750.

Estimated Number of Respondents: 600.

Estimated Number of Responses: 6,750.

Frequency of Response: 1.

Average Hours per Response: 33 hours.

Total Estimated Burdens:

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Mortgage Credit Analysis Worksheet ..	250	1	2750	.50	1375	$25	$34,375
Rider For Section 184-Tribal Trust	50	1	500	.50	250	18	4500
Firm Commitment Submission Checklist	250	1	3000	.15	450	18	8100
Checklist for Proposed Transactions Less Than 1 Year Old	50	1	500	.15	75	18	1350
Total	600	.....	6750	.....	2150	.....	48,325

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapters 35.

Dated: *March 20, 2014.*

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2014–06561 Filed 3–24–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5752–N–27]

30-Day Notice of Proposed Information Collection: State Community Development Block (CDBG) Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* April 24, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. Persons with hearing or speech

impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A. The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on January 23, 2014.

A. Overview of Information Collection

Title of Information Collection: Comment Request, State Community Development Block (CDBG) Program.

OMB Approval Number: 2506–0085.

Type of Request: Extension of a currently approved collection.

Form Number: HUD–40108.

Description of the need for the information and proposed use: The Housing and Community Development Act of 1974, as amended (HCDA), requires grant recipients that receive CDBG funding to retain records necessary to document compliance with statutory and regulatory requirements on an on-going basis. Grantees must also submit an annual performance and evaluation report to demonstrate progress that it has made in carrying out its consolidated plan, and such records as may be necessary to facilitate review and audit by HUD of the grantee's administration of CDBG funds [Section 104(e)]. The statute also requires [Section 104(e)(2)] that HUD conduct an annual review to determine whether states have distributed funds to units of general local government in a timely manner. Respondents (i.e. affected public): This information collection applies to 50 State CDBG Grantees (49 states and Puerto Rico but not Hawaii).

Estimated Number of Respondents: 50.

Estimated Number of Responses: 50.

Frequency of Response: The frequency of the response to the collection of information is annual at 1.5 hour per response with a total of 75 hours reporting burden. The record keeping burden for program compliance is already included under the currently approved information collection. The estimate of the annual reporting and recordkeeping is 112,180 hours for 50 grant recipients.

Total Estimated Burdens: 112,180.

Note: Preparer of this notice may substitute the chart for everything beginning with estimated number of respondents above.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
PER	50	1	1	237	11,850		
Recordkeeping: States Localities	50	On-going	On-going	176	8,800		
	3,500			26.13	91,456		
Timely Distribution Form:	50	1	1	1.5	75		
Total					112,180		

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapters 35.

Dated: March 12, 2014.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2014–06562 Filed 3–24–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement (BSEE)

[Docket ID: BSEE–2014–0003; 14XE8370SD ED1OS0000.JAE000 EEGG000000]

Notice of the National Preparedness for Response Exercise Program (PREP) Guidelines; Comment Request

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Notice.

SUMMARY: The BSEE is inviting you to provide comments on the Draft National Preparedness for Response Exercise Program (PREP) Guidelines update. The BSEE is publishing this notice on behalf of the National Schedule Coordination Committee (NSCC), which is comprised of representatives from the U.S. Coast Guard (USCG); Environmental Protection Agency (EPA); Pipeline and Hazardous Materials Safety Administration (PHMSA), under the Department of Transportation; and the Bureau of Safety and Environmental Enforcement (BSEE), under the Department of the Interior. These Guidelines were last revised in 2002. This notice solicits comments on the Draft PREP Guidelines document available in the regulations.gov docket ID: BSEE–2014–0003 and on the BSEE Web site at *http://www.bsee.gov/uploadedFiles/BSEE/About_BSEE/Divisions/OSRD/PREPGuidelines%203-2014.pdf*.

DATES: You must submit comments by April 24, 2014. The NSCC may not fully consider comments received after this date. After reviewing comments on the Draft PREP Guidelines available in the docket, the NSCC will determine if a public hearing is necessary before final publication of the revised PREP Guidelines to provide the oil and gas industry and the public with an opportunity to submit additional comments for consideration.

ADDRESSES: You may submit comments and additional materials by any of the following methods.

- *Electronically:* go to *http://www.regulations.gov*. In the entry entitled, Enter Keyword or ID, enter BSEE–2014–0003, then click search.

Follow the instructions to submit public comments and view supporting and related materials available for this notice.

• *Email: oilspillresponsedivision@bsee.gov* or mail or hand-carry comments to the Department of the Interior, Bureau of Safety and Environmental Enforcement, Oil Spill Response Division, 381 Elden Street, HE 3327, Herndon, Virginia, 20170, Attention: Ms. Kelly Schnapp. Please reference *National Preparedness for Response Exercise Planning Guidelines* in your comments and include your name and return address.

FOR FURTHER INFORMATION CONTACT:

For BSEE: Ms. Kelly Schnapp, Oil Spill Response Division, 703–787–1569.

For USCG: Mr. Kevin Sligh, Office of Environmental Response Policy, 202–372–2250.

For EPA: Mr. Troy Swackhammer, Office of Emergency Management, Regulation and Policy Development Division, 202–564–1966.

For PHMSA: Mr. Ed Murphy, Office of Pipeline Safety, 202–366–4595.

SUPPLEMENTARY INFORMATION: *Basis and Purpose:* The Oil Pollution Act of 1990 (OPA 90), signed on August 18, 1990, requires, among other things, that industry representatives and government officials conduct oil spill response exercises to ensure that personnel and equipment are ready to respond to oil spills. The NSCC focuses on leading a systematic national exercise schedule that applies to all government and oil and gas industry plan holders and creates a workable exercise program consistent with this statutory requirement. The NSCC coordinates on a monthly basis to ensure consistency and efficiency among EPA, USCG, PHMSA, and BSEE activities. Each agency retains regulatory responsibility to oversee the specific regulated community activities under their respective jurisdictions and authorities. The PREP is a voluntary program developed to provide a mechanism for compliance with the exercise requirements in a way that is economically feasible for both the government and the oil industry to adopt and sustain.

The first PREP Guidelines were published in August 1994 and were referred to as the ''Red Book.'' These Guidelines continue to provide useful information, including the Federal government's plan to conduct six government-led and 14 industry-led Area Exercises annually. They also communicate the federal government's plans to ensure that at least one exercise is conducted in each of the 42 USCG Captain of the Port (COTP) zones and each of EPA's 10 Regions at least every 3 years. The PREP Guidelines continue to outline a comprehensive exercise program option that the regulated community may voluntarily use to meet the requirements of section 4202(a) of OPA 90.

The government and the oil and gas industry must always maintain a high level of preparedness to respond to an oil spill. Even though the average oil spill size and frequency have continued to decline since the adoption of OPA 90, the need for these Guidelines remains evident. There have been several major oil spills over the past decade where preparedness proved key to an effective response. In addition, the NSCC has incorporated key lessons learned from past significant oil spills resulting from natural or man-made events, including:

1. The 2004 M/V ATHOS I tanker spill;
2. The 2005 Katrina and Rita Hurricanes;
3. The 2007 M/V COSCO BUSAN incident;
4. The 2010 Marshall, Michigan inland oil spill; and
5. The 2010 DEEPWATER HORIZON oil spill.

After the original PREP Guidelines were published, the four referenced Federal agencies revised them in 2002. The 2002 edition is available in the regulations.gov docket USCG–2011–1178. On February 22, 2012, the USCG published a notice and request for public comments in the **Federal Register,** which provided advance notice that the NSCC agencies planned to update the 2002 PREP Guidelines (77 FR 10542). During the 60-day comment period, the USCG, on behalf of the NSCC, received 214 comments from the oil and gas industry, professional organizations, Federal and state government agencies, and non-government organizations (NGOs). The NSCC agencies have revised the PREP Guidelines in order to reflect the comments received on the 2012 notice, and also to reflect, since 2002, agency reorganizations, lessons learned from past incidents, and new regulations, including the USCG's Salvage and Marine Firefighting (SMFF) regulations. We are not publishing the Draft PREP Guidelines in this **Federal Register** notice. However, the Draft PREP Guidelines are available for public viewing and we invite public comment on the draft update to the PREP Guidelines located in regulations.gov docket ID: BSEE–2014–0003 and on the BSEE Web site at *www.bsee.gov*.

The Draft PREP Guidelines would include new terminology and definitions that represent agency reorganizations. The Draft PREP Guidelines would incorporate new requirements, such as those found in the SMFF regulations and requirements related to the exercise credit process and subsea containment equipment. Additionally, these updates would continue to strengthen coordination among the NSCC agencies and emphasize the plan holder's preparedness responsibilities.

The NSCC members would also incorporate agency-specific changes, lessons learned, and their own experiences over the past decade into the Draft PREP Guidelines update. In the following sections, we summarize the changes that would be made to the PREP Guidelines represented in the draft update and discuss the comments the NSCC received in response to the 2012 **Federal Register** notice.

Summary of Changes

Definitions and Terminology: The draft update would clarify the definition of an ''area'' using the COTP zone delineations. The update would also add definitions for (a) remote assessment and consultation, (b) resource provider, (c) Marine Firefighting (MFF) Organization, (d) SMFF Organization, and (e) Spill Response Operating Team. The USCG would add references to the COTP and Federal On-Scene Coordinator (FOSC) throughout the guidance. Hazardous substance terminology would be added throughout the document to highlight when it is applicable. References to the Minerals Management Service (MMS) in the 2002 PREP Guidelines would be replaced with BSEE throughout the document to reflect the new bureau that enforces 30 CFR Part 254.

SMFF Additions: The Draft PREP Guidelines would now include guidance for adding SMFF providers and equipment into a plan holder's exercise program. These updates would be included throughout the Guidelines in applicable sections.

Federal Exercise Scheduling and Spill Response Credit: The scheduling process, maintained by the NSCC, would be further clarified by adding the USCG's HOMEPORT Web site as another scheduling tool for Outer Continental Shelf-based exercises. The NSCC would also add additional guidance for requesting credit for responses to actual spills.

USCG Specific Guidance Updates: In addition to SMFF exercise requirements, the USCG proposes to add guidance specifically on Vessel of Opportunity Skimming System (VOSS) and Spilled Oil Recovery System

(SORS) equipment deployment exercise frequency and on how to incorporate joint exercises into an exercise program to effectively meet the intent of VOSS and SORS exercises.

BSEE Specific Guidance: References to BSEE would replace references to MMS throughout the guidance, since it is now the bureau that has regulatory authority to ensure that offshore facility owners and operators comply with 30 CFR Part 254 preparedness requirements. BSEE's updates would also reflect new technology available for responses during continuous offshore discharges and the integration of offshore subsea containment.

PHMSA Specific Guidance: References to PHMSA would replace references to RSPA throughout the guidance, since it is now the agency that has regulatory authority to ensure that pipeline operators comply with the requirements found in 49 CFR Part 194.

Documentation: Appendix A from the 2002 PREP Guidelines, which contained examples of internal exercise documentation forms, would be replaced. Alternative formats that have been developed by stakeholders contain the same information as the 2002 examples, which should satisfy agency documentation requirements.

Summary of Comments on the Notice and Request for Comments

The USCG, on the behalf of the NSCC, received 214 comments from government agencies, regulated communities, private industry, and NGOs in response to the request for comments published on February 22, 2012. Some comments were not related to the proposed update. We did not address comments that were outside the scope of this PREP Guidance update. All of the comments received are posted on regulations.gov, under docket number USCG–2011–1178.

Summary of Select Comments and Responses

Comment on Non Tank Vessel Response Plan: One commenter requested that the PREP Guidelines include a new section addressing Non Tank Vessel Response Plan exercise requirements, referenced in 33 CFR Part 155.

Response: The final rule for Non Tank Vessel Response Plan exercise requirements was recently published on September 27, 2013. Exercise requirements for Non Tank Vessels will be evaluated for inclusion into the draft PREP Guidelines final rule by the NSCC member agencies during the draft 2nd Notice Comment adjudication process.

Comments on Sharing Lessons Learned: There were many comments requesting that government and industry make available to the public lessons learned from response exercises.

Response: The NSCC does not have the capability to manage public access to lessons learned at this time. We encourage the regulated community and government agencies to share lessons learned whenever practicable.

Comments on Response Equipment: Commenters asked NSCC to consider adding alternative containment methods, specifically dams and weirs, in the Guidelines. A commenter stated that some inland facilities are drained by small, steep-sided streams where boom deployment is difficult and may not be the most appropriate first response. The commenter stated that underflow dams could be used where the water flow is difficult for boom deployment, but could contain free-phase oil for recovery. In addition, the commenter stated that weirs could also be used to take advantage of existing infrastructure (*i.e.,* culverts, bridges, piers, etc.). Another commenter raised concern about the 1,000-foot boom requirement for facilities located near small water bodies, whereby less than 1,000 feet of boom could be more appropriate given the small size of the stream and the physical constraints of deployment.

Response: We have found that it is best if the PREP Guidelines avoid specifying particular types of equipment, or advocating use of an approach unique to one geographic area. The PREP Guidelines should be broad enough to encompass changing technology and many different environments. Oil spill response equipment is not limited to those systems mentioned in the PREP Guidelines. The NSCC recognizes that alternatives to containment boom may be more appropriate as part of the initial phase of the oil spill response for certain inland facilities. As such, the NSCC requests that stakeholders provide detailed suggestions for revisions to the ''Oil and Hazardous Substance Response Systems'' portion of Section 2 in the Guidelines on these alternatives.

Comments pertaining to Exercise Design: There were a number of commenters that suggested adding language to encourage more exercise participation from stakeholders and to enhance scenario design. Many comments provided valuable information about exercise design best practices and considerations. These ranged from specific documentation suggestions to broader exercise design concepts. One consistent recommendation was to acknowledge the Homeland Security Exercise and Evaluation Program (HSEEP) as a planning process for exercise design in the PREP Guidelines. Some commenters requested exercise expectations be scaled back for plan holders that have lower risk operations or smaller scale response plans. The following are other general ideas that commenters recommended:

- Exercise planners should always plan an exercise with safety objectives as the priorities because that is more important than strictly focusing on response time.
- Exercise designers should conduct equipment deployment exercises in average expected conditions.
- Exercise planners should ensure plan holders are regularly involved with Area Committees and Regional Response Team meetings.
- Exercise planners should document lessons learned as a key exercise component, but they should also recognize that taking action and making changes to processes or plans based on these lessons learned completes the exercise.
- Exercise design (announced and unannounced) should include objectives that focus on critical factors for response success, including the dispersant approval process.
- Exercise design should consider downstream geographic areas and address cross-boundary and downstream issues in the objectives.
- There should not be a reluctance to identify and document problems or challenges during an exercise.
- When applicable, Spill Management Team Tabletop Exercises (TTX) should include communication between the qualified individual and the SMFF first response.
- Exercises should align with staffing levels described in contingency plans. If additional positions are needed during the exercise they should be incorporated into subsequent plans and described under lessons learned.
- Exercise planners should include key principal officials from the design and response organizations.
- Exercise planners should consider using multiple spills to reach the Worst Case Discharge (WCD) level and avoid designing exercises that are conducted like a rehearsed play.
- Exercise planners should use a tiered exercise structure comprised of quarterly phone confirmations, periodic one-day muster drills (perhaps one location per month), an annual equipment deployment, and an annual TTX.

Response: The PREP Guidelines are not intended to prescribe specific exercise design processes. Exercise development and conduct should be defined by the specific exercise planning team and not by the PREP Guidelines. Therefore, these suggestions are outside the scope of this Notice. However, due to the universal nature of HSEEP, the NSCC acknowledges this design process option in the PREP Guidelines.

Comments pertaining to PREP Guidelines Formatting: One commenter provided a few recommendations to improve the functionality of the Guidelines. Specifically, the commenter found formatting errors and suggested different approaches to the example exercise evaluation forms in Appendix A.

Response: When considering the commenter's format suggestions, the NSCC came to realize that there are two versions of the PREP Guidelines. The General Printing Office's (GPO) hard copy version (GPO 2002–493–463) does not have the same errors identified in the online version. We will ensure these errors do not appear in the updated hard copy or online version. We also made formatting changes throughout the document for consistency. Based on the commenter's recommendation, we would also add an acronym list and remove unnecessary asterisks. Finally, we note that the draft PREP Guidelines update would replace Appendix A in its entirety.

Comments on Exercise Frequency: One commenter asked for clarification on the number of Government-Initiated Unannounced Exercises (GIUE) that must be conducted annually.

Response: The regulations that govern the number and frequency of GIUEs for marine transportation-related (MTR) facilities and vessels are located in 33 CFR Parts 154 and 155. Each agency determines how many GIUEs are initiated per year within the prescribed limits.

Comments on SMFF: More than a dozen comments were received relating to SMFF exercise requirements. Most of these comments stated that the SMFF exercise requirements should be added to the draft Guidelines. Some of the SMFF-related comments recommended that requirements for plan holders and SMFF providers should be kept separate from other PREP oil spill exercise requirements.

Several commenters recommended that the roles and responsibilities for both plan holder (including vessel owner, operator, and crew) and SMFF providers should be clearly defined in the PREP Guidelines.

Response: SMFF exercise requirements for vessel response plans were implemented by regulation, 33 CFR 155.4052, February 2011. Some of these requirements, including remote assessment and consultation exercises, are unique to SMFF. As a result of this new regulation, SMFF requirements for both announced and unannounced exercises were added to the draft Guidelines.

Although some SMFF exercises can be conducted independently, plan holders are encouraged to incorporate SMFF into their oil spill response scenarios. The Draft Guidelines describe SMFF exercise requirements, including incorporation of SMFF components into oil spill exercises. Furthermore, the roles and responsibilities for plan holders and SMFF providers have been clearly defined for each SMFF exercise type.

Comments on WCD Definition: Several commenters suggested changing the definition and exercise requirements for the responses to WCD scenarios.

Response: The definitions for vessel and MTR facility WCD were updated to reflect the language found in 33 CFR Parts 154 and 155. However, exercise requirements for vessel and facility plan holder responses to their WCD, as defined in the regulations, will remain unchanged as part of the update to the PREP Guidelines.

Comments on Federal Oversight: There were numerous comments suggesting specific recommendations for Federal regulatory agencies to improve exercise program oversight. The commenters included specific documentation and details that Federal agencies should look for when conducting inspections.

Response: These recommendations are outside the scope of the PREP Guidelines. Each regulatory agency is responsible for establishing procedures for enforcing the regulations where they have jurisdiction and authority.

Paperwork Reduction Act (PRA) of 1995

The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond. While this notice does not have information collection (IC), the PREP document, which we are requesting comments on, may be considered IC. The OMB approved all the ICs and each agency's respective OMB control number is listed on page *iii* of the PREP document.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Otherwise, publicly available docket materials are available electronically in *http://www.regulations.gov*.

Dated: March 18, 2014.

David M. Moore,

Chief, Oil Spill Response Division, Bureau of Safety and Environmental Enforcement.

[FR Doc. 2014–06519 Filed 3–24–14; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2014–N030; FXES11130900000C2–145–FF09E32000]

Endangered and Threatened Wildlife and Plants; 5-Year Status Reviews of 33 Southeastern Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of reviews; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are initiating 5-year status reviews of 33 species under the Endangered Species Act of 1973, as amended (Act). We conduct these reviews to ensure that the classification of species as threatened or endangered on the Lists of Endangered and Threatened Wildlife and Plants is accurate. A 5-year review is an assessment of the best scientific and commercial data available at the time of the review. We are requesting submission of information that has become available since the last review of each of these species.

DATES: To allow us adequate time to conduct these reviews, we must receive

your comments or information on or before May 27, 2014. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: For instructions on how to submit information and review information we receive on these species, see ''Request for New Information.''

FOR FURTHER INFORMATION CONTACT: For species-specific information, see ''Request for New Information.''

SUPPLEMENTARY INFORMATION: Under the Act (16 U.S.C. 1531 et seq.), we maintain lists of endangered and threatened wildlife and plant species in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for wildlife) and 17.12 (for plants) (collectively referred to as the List). The List is also available on our internet site at *http://www.fws.gov/endangered/species/us-species.html.* Section 4(c)(2)(A) of the Act requires that we conduct a review of each listed species at least once every 5 years. Then, on the basis of such reviews, under section 4(c)(2)(B), we determine whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened or from threatened to endangered. We must support the action by the best scientific and commercial data available. In determining whether to delist a species, we must consider if these data substantiate that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification would require a separate rulemaking process. We make amendments to the List through final rules published in the **Federal Register**.

Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under our active review.

Species Under Review

This notice announces our active review of 25 species that are currently listed as endangered:

Anastasia Island beach mouse (*Peromyscus polionotus phasma*)
Perdido Key beach mouse (*Peromyscus polionotus trissyllepsis*)
Southeastern beach mouse (*Peromyscus polionotus niveiventris*)
Puerto Rican parrot (*Amazona vittata*)
Cumberland elktoe (*Alasmidonta atropurpurea*)
Appalachian elktoe (*Alasmidonta raveneliana*)
Yellow blossom (*Epioblasma florentina florentina*)
Southern combshell (*Epioblasma penita*)
Green blossom (*Epioblasma torulosa gubernaculum*)
Tubercled blossom (*Epioblasma torulosa torulosa*)
Speckled pocketbook (*Lampsilis streckeri*)
Black clubshell (*Pleurobema curtum*)
Flat pigtoe (*Pleurobema marshalli*)
Heavy pigtoe (*Pleurobema taitianum*)
Stirrupshell (*Quadrula stapes*)
Alabama cave shrimp (*Palaemonias alabamae*)
Plicate rocksnail (*Leptoxis plicata*)
Flat pebblesnail (*Lepyrium showalteri*)
Cylindrical lioplax (*Lioplax cyclostomaformis*)
Carex lutea (golden sedge)
Conradina etonia (Etonia rosemary)
Deeringothamus rugelii (Rugel's pawpaw)
Dicerandra cornutissma (longspurred mint)
Oxypolis canbyi (Canby's dropwort)
Solidago shortii (Shorts goldenrod)

This notice also announces our active review of eight species that are currently listed as threatened:

Painted snake coiled forest snail (*Anguispira picta*)
Lacy elimia (*Elimia crenatella*)
Round rocksnail (*Leptoxis ampla*)
Painted rocksnail (*Leptoxis taeniata*)
Bonamia *grandiflora* (Florida bonamia)
Eriogonum longifolium var. *gnapholifolium* (scrub buckwheat)
Euphorbia telephioides (telephus spurge)
Ribes echinelluum (Miccosukee gooseberry)

What information do we consider in a 5-year review?

A 5-year review considers the best scientific and commercial data that have become available since the current listing determination or most recent status review of each species, such as:

A. Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions, including but not limited to amount, distribution, and suitability;

C. Conservation measures that have been implemented to benefit the species;

D. Threat status and trends (see five factors under heading ''How do we determine whether a species is endangered or threatened?''); and

E. Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

New information will be considered in the 5-year review and ongoing recovery programs for the species.

Definitions

A. *Species* includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate which interbreeds when mature.

B. *Endangered* means any species that is in danger of extinction throughout all or a significant portion of its range.

C. *Threatened* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

How do we determine whether a species is endangered or threatened?

Section 4(a)(1) of the Act establishes that we determine whether a species is endangered or threatened based on one or more of the following five factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence.

What could happen as a result of this review?

If we find that there is new information concerning any of these 33 species indicating that a change in classification may be warranted, we may propose a new rule that could do one of the following: (a) Reclassify the species from endangered to threatened (downlist); (b) reclassify the species from threatened to endangered (uplist); or (c) delist the species. If we determine that a change in classification is not warranted, then the species will remain on the List under its current status.

Request for New Information

To do any of the following, contact the person associated with the species you are interested in below:

A. To get more information on a species;

B. To submit information on a species; or

C. To review information we receive, which will be available for public inspection by appointment, during normal business hours, at the listed addresses.

Mammals

• Anastasia Island beach mouse and southeastern beach mouse: North Florida Ecological Services Field Office, U.S. Fish and Wildlife Service, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256; fax 904–731–3045. For information on these species, contact Bill Brooks at the ES Field Office (by phone at 904–731–3136 or by email at *bill_brooks@fws.gov*).

• Perdido Key beach mouse: Panama City Ecological Services Field Office, U.S. Fish and Wildlife Service, 1601 Balboa Ave., Panama City, FL 32405; fax 850–763–2177. For information on this species, contact Kristi Yanchis at the ES Field Office (by phone at 850–769–0552 ext. 252, or by email at *kristi_yanchis@fws.gov*).

Birds

• Puerto Rican parrot: Caribbean Ecological Services Field Office, U.S. Fish and Wildlife Service, Puerto Rican Parrot Recovery Program, Río Grande Station, Garcia de la Noceda Street, Local 38, 1600, Rio Grande, PR 00745; fax 787–887–7512. For information on this species, contact Marisel Lopez at the Río Grande Station (by phone at 787–887–8769 ext. 224, or by email at *marisel_lopez@fws.gov*).

Clams

• Cumberland elktoe: Tennessee Ecological Services Field Office, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, TN 38501; fax 931–528–7075. For information on this species, contact Stephanie Chance at the ES Field Office (by phone at 931–528–6481 ext. 211, or by email at *stephanie_chance@fws.gov*).

• Appalachian elktoe: Asheville Ecological Services Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, NC 28801; fax 828–258–5330. For information on this species, contact John Fridell at the ES Field Office (by phone at 828–258–3939 ext. 225, or by email at *john_fridell@fws.gov*).

• Southern combshell, black clubshell, flat pigtoe, heavy pigtoe, and stirrupshell: Mississippi Ecological Services Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, MS 39213; fax 601–965–4340. For information on these species, contact Paul Hartfield at the ES Field Office (by phone at 601–321–1125, or by email at *paul_hartfield@fws.gov*).

• Speckled pocketbook: Arkansas Ecological Services Field Office, U.S. Fish and Wildlife Service, 110 South Amity Road, Suite 300, Conway, AR 72032; fax 501–513–4480. For information on this species, contact Chris Davidson at the ES Field Office (by phone at 501–513–4481, or by email at *chris_davidson@fws.gov*).

• Yellow blossom, green blossom, tubercled blossom: Tennessee Ecological Services Field Office, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, TN 38501; fax 931–528–7075. For information on these species, contact Peggy Shute at the ES Field Office (by phone at 931–528–6481, or by email at *peggy_shute@fws.gov*).

Snails and Crustaceans

• Alabama cave shrimp, plicate rocksnail, flat pebblesnail, cylindrical lioplax, lacy elimia, round rocksnail, painted rocksnail: Alabama Ecological Services Field Office, U.S. Fish and Wildlife Service, 1208–B Main Street, Daphne, AL 36526; fax 251–441–6222. For information on these species, contact Jeff Powell at the ES Field Office (by phone at 251–441–5181, or by email at *jeff_powell@fws.gov*).

• Painted snake coiled forest snail: Tennessee Ecological Services Field Office, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, TN 38501; fax 931–528–7075. For information on this species, contact Geoff Call at the ES Field Office (by phone at 931–525–4983, or by email at *geoff_call @fws.gov*).

Plants

• Golden sedge: Raleigh Ecological Services Field Office, U.S. Fish and Wildlife Service, 551–F Pylon Drive, Raleigh, NC 27606; fax 919–856–4556. For information on this species, contact Dale Suiter at the ES Field Office (by phone at 919–856–4520, or by email at *dale_suiter@fws.gov*).

• Etonia rosemary, Florida bonamia, scrub buckwheat, longspurred mint, and Rugel's pawpaw: North Florida Ecological Services Field Office, U.S. Fish and Wildlife Service, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256; fax 904–731–3045. For information on these species, contact Todd Mecklenborg at the ES Field Office (by phone at 727–892–4104, or by email at *todd_mecklenborg@fws.gov*).

• Canby's dropwort: Charleston Ecological Services Field Office, U.S. Fish and Wildlife Service, 176 Croghan Spur Road, Suite 200, Charleston, SC 29407; fax 843–727–4218. For information on this species, contact Jason Ayers at the ES Field Office (by phone at 843–727–4707, or by email at *jason_ayers@fws.gov*).

• Short's goldenrod: Kentucky Ecological Services Field Office, U.S. Fish and Wildlife Service, 330 West Broadway, Suite 365, Frankfort, KY 40601; fax 502–695–1024. For information on this species, contact Mike Floyd at the ES Field Office (by phone at 502–695–0468, or by email at *mike_floyd@fws.gov*).

• Miccosukee gooseberry and Telephus spurge: Panama City Ecological Services Field Office, U.S. Fish and Wildlife Service, 1601 Balboa Ave., Panama City, FL 32405; fax 850–763–2177. For information on these species, contact Vivian Negron-Ortiz at the ES Field Office (by phone at 850–769–0552 ext. 231, or by email at *vivian_negronortiz@fws.gov*).

We request any new information concerning the status of any of these 33 species. See ''What information do we consider in a 5-year review?'' heading for specific criteria. Information submitted should be supported by documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that the entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We publish this document under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: March 6, 2014.

Cynthia K. Dohner,

Regional Director, Southeast Region.

[FR Doc. 2014–06502 Filed 3–24–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX14EF00CNTRC00]

Agency Information Collection Activities: Request for Comments

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of a new information collection, Assessment of the Business Requirements and Benefits of Enhanced Geospatial Water Data.

SUMMARY: We (the U.S. Geological Survey) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act (PRA) of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC.

DATES: To ensure that your comments are considered, we must receive them on or before May 27, 2014.

ADDRESSES: You may submit comments on this information collection to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive MS 807, Reston, VA 20192 (mail); (703) 648–7197 (fax); or *dgovoni@usgs.gov* (email). Please reference 'Information Collection 1028–NEW, Assessment of the Business Requirements and Benefits of Enhanced Geospatial Water Data' in all correspondence.

FOR FURTHER INFORMATION CONTACT: Steve Aichele, Geographer, at (517) 887–8918 or *saichele@usgs.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Geological Survey National Geospatial Program (NGP) is the Federal agency tasked by the Office of Management and Budget Circular A–16 with coordination of the hydrography (surface-water features) geospatial data theme. The purpose of this study is to ensure that the NGP's management of hydrography data theme is optimized to fully support the potential of geospatial data and information use in water science and mapping.

This one-time, voluntary information collection will engage professional users of hydrography information, including scientists, planners, and managers from Federal, state, and local government as well as academia and the private sector. The process will be guided by an interagency management team led by USGS with support from a professional services contractor. The information collection will include an online survey as well as interviews and focus group using a standardized template. The information collection will focus on (1) respondent's current use of hydrography data, (2) desired improvements to hydrography data, and (3) benefits accrued to the respondent's mission if enhanced hydrography data were available. Personally Identifiable Information (PII) will not be sought. The results of the information collection will be used to evaluate potential future program changes for USGS hydrography data. A summary of the results will be published in a USGS publication.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2), and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection''. All information will be stored according to established USGS security and information access protocols.

II. Data

OMB Control Number: 1028–NEW.

Title: Assessment of the Business Requirements and Benefits of Enhanced Geospatial Water Data.

Type of Request: New information collection.

Affected Public: States, U.S. Territories, Tribes, and selected private natural resource development companies.

Respondent's Obligation: None. Participation is voluntary.

Frequency of Collection: One time.

Estimated Annual Number of Respondents: 300.

Estimated Total Number of Annual Responses: 300.

Estimated Time per Response: 4 hours.

Estimated Annual Burden Hours: 1200.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: There are no ''non-hour cost'' burdens associated with this IC.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number and current expiration date.

III. Request for Comments

We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your personal mailing address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment, including your personally identifiable information, may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public view, we cannot guarantee that we will be able to do so.

Mark Demulder,

Chief, National Geospatial Program.

[FR Doc. 2014–06456 Filed 3–24–14; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[DR.5B814.IA001213]

Renewal of Agency Information Collection for Native American Business Development Institute (NABDI) Funding Solicitations and Reporting

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Assistant Secretary—Indian Affairs is seeking comments on the renewal of Office of Management and Budget (OMB) approval for the collection of information for the Native American Business Development Institute (NABDI) Funding Solicitation and Reporting authorized by OMB Control Number 1076–0178. This information collection expires July 31, 2014.

DATES: Submit comments on or before May 27, 2014.

ADDRESSES: You may submit comments on the information collection to Jack Stevens, Division Chief, Office of Indian Energy and Economic Development, Assistant Secretary—Indian Affairs, 1951 Constitution Avenue NW., MS–20 SIB, Washington, DC 20240; facsimile: (202) 208–4564; email: *Jack.Stevens@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Jack Stevens, (202) 208–6764.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Division of Economic Development (DED), within the Office of Indian Energy and Economic Development (IEED), established the Native American Business Development Institute (NABDI) to provide technical assistance funding to federally

recognized American Indian tribes seeking to retain universities and colleges, private consulting firms, non-academic/non-profit entities, or others to prepare studies of economic development opportunities or plans. These studies and plans will empower American Indian tribes and tribal businesses to make informed decisions regarding their economic futures. Studies may concern the viability of an economic development project or business or the practicality of a technology a tribe may choose to pursue. The DED will specifically exclude from consideration proposals for research and development projects, requests for funding of salaries for tribal government personnel, funding to pay legal fees, and requests for funding for the purchase or lease of structures, machinery, hardware or other capital items. Plans may encompass future periods of five years or mo and include one or more economic development factors including but not limited to land and retail use, industrial development, tourism, energy, resource development and transportation.

This is an annual program whose primary objective is to create jobs and foster economic activity within tribal communities. The DED will administer the program within IEED; and studies and plans as described herein will be sole discretionary projects DED will consider or fund absent a competitive bidding process. When funding is available, DED will solicit proposals for studies and plans. To receive these funds, tribes may use the contracting mechanism established by Public Law 93–638, the Indian Self-Determination Act or may obtain adjustments to their funding from the Office of Self-Governance. See 25 U.S.C. 450 *et seq.*

Interested applicants must submit a tribal resolution requesting funding, a statement of work describing the project for which the study is requested or the scope of the plan envisioned, the identity of the academic institution or other entity the applicant wishes to retain (if known) and a budget indicating the funding amount requested and how it will be spent. The DED expressly retains the authority to reduce or otherwise modify proposed budgets and funding amounts.

Applications for funding will be juried and evaluated on the basis of a proposed project's potential to generate jobs and economic activity on the reservation.

II. Request for Comments

The IEED requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, email address or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0178.

Title: Native American Business Development Institute (NABDI) Funding Solicitations and Reporting.

Brief Description of Collection: Indian tribes that would like to apply for NABDI funding must submit an application that includes certain information. A complete application must contain:

- A duly-enacted, signed resolution of the governing body of the tribe;
- A proposal describing the planned activities and deliverables products; and
- The identity (if known) of the academic institution, private consultant, non-profit/non-academic entity, or other entity the tribe has chosen to perform the study or prepare the plan; and
- A detailed budget estimate, including contracted personnel costs, travel estimates, data collection and analysis costs, and other expenses, through DED reserves authority to reduce or otherwise modify this budget.

The DED requires this information to ensure that it provides funding only to those projects that meet the economic development and job creation goals for which NABDI was established. Applications will be evaluated on the basis of the proposed project's potential to generate jobs and economic activity on the reservation. Upon completion of the funded project, a tribe must then submit a final report summarizing events, accomplishments, problems and/or results in executing the project. A response is required to obtain a benefit.

Type of Review: Extension without change of currently approved collection.

Respondents: Indian tribes with trust or restricted land.

Number of Respondents: 20 applicants per year; 20 project participants each year, on average.

Frequency of Response: Once per year for applications and final report.

Estimated Time per Response: 40 hours per application; 1.5 hours per report.

Estimated Total Annual Hour Burden: 830 hours (800 for applications and 30 for final reports).

Estimated Total Annual Non-Hour Dollar Cost: $0.

Dated: March 19, 2014.

John Ashley,

Acting Assistant Director for Information Resources.

[FR Doc. 2014–06554 Filed 3–24–14; 8:45 am]

BILLING CODE 4310–G1–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[145A2100DD.AADD001000.A0E501010.999900]

Renewal of Agency Information Collection for No Child Left Behind Act Implementation

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Education (BIE) is seeking comments on the renewal of Office of Management and Budget (OMB) approval for the collection of information for the No Child Left Behind Act authorized by OMB Control Number 1076–0163. This information collection expires March 31, 2014.

DATES: Interested persons are invited to submit comments on or before April 24, 2014.

ADDRESSES: You may submit comments on the information collection to the Desk Officer for the Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–5806 or you may send an email to: *OIRA_Submission@omb.eop.gov.* Please send a copy of your comments to Jeffrey Hamley, Bureau of Indian Education, Division of Performance and

Accountability, 1011 Indian School Road NW., Suite 332, Albuquerque, NM 87104; facsimile: (505) 563–5281; email: *Jeffrey.Hamley@bie.edu.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Hamley, telephone: (505) 563–5255. You may review the information collection request online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

I. Abstract

The BIE is seeking renewal of the approval for the information collection conducted under 25 CFR parts 30, 37, 39, 42, 44, and 47 under OMB Control Number 1076–0163. This information collection is necessary to implement Public Law 107–110, No Child Left Behind Act of 2001 (NCLB). The NCLB requires all schools, including Bureau-funded and operated schools, to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging academic achievement standards and assessments. The BIE has promulgated several regulations implementing the NCLB Act. This OMB Control Number addresses the following regulations.

- 25 CFR part 30—Adequately Yearly Progress (AYP). Tribes/school boards may request an alternative to the established AYP definition or standards. Tribes/school boards may provide evidence that BIE made an error in identifying the school for improvement. Achievement, attendance and graduation rates are collected from schools to facilitate yearly calculation of AYP.
- 25 CFR part 37—Geographic Boundaries. This part establishes procedures for confirming, establishing, or revising attendance areas for each Bureau-funded and operated school. Tribes and school boards must submit certain information to BIE to propose a change in geographic boundaries.
- 25 CFR 39—Indian School Equalization Program (ISEP). This part provides for the uniform direct funding of Bureau-operated and tribally operated day schools, boarding schools, and dormitories. Auditors of schools, to ensure accountability in student counts and student transportation, must certify that they meet certain qualifications and have conducted a conflict of interest check. Schools must submit information to BIE to apply for funds in the event of an emergency or unforeseen contingency.
- 25 CFR part 42—Student Rights. The purpose of this part is to govern student rights and due process procedures in disciplinary proceedings in all Bureau-funded and operated schools. This part requires all the schools to provide notice of disciplinary charges, provide a copy of the hearing of record, and provide a student handbook.
- 25 CFR part 44—Grants under the Tribally Controlled Schools Act. The purpose of this part is to establish who is eligible for a grant and requires tribes to submit information to BIE to retrocede a program to the Secretary.
- 25 CFR part 47—Uniform Direct Funding and Support for Bureau-operated Schools. This part contains the requirements for developing local educational financial plans in order to receive direct funding from the Bureau. This part requires school supervisors to submit quarterly reports to school boards; submit a notice of appeal to the BIE for a decision where agencies disagree over expenditures; make certain certifications in financial plans; and send the plan and documentation to the BIE or submit a notice of appeal.

There are no forms associated with collection. No third party notification or public disclosure burden is associated with this collection.

II. Request for Comments

The BIE requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it displays a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, email address or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0163.

Title: No Child Left Behind.

Brief Description of Collection: Pursuant to NCLB implementing regulations, Bureau-funded and operated schools must provide certain information if they wish to use alternative AYP standards, change their geographic boundaries, obtain contingency funds, retrocede a program, or obtain direct funding from the Bureau through submission of a local educational financial plan. For these items, a response is required to obtain a benefit (continued supplementary program funding). In addition, all Bureau-funded and operated schools must provide students with written notice of disciplinary charges, a copy of the hearing record, and student handbook. These items are mandatory information collections.

Type of Review: Extension without change of currently approved collection.

Respondents: Bureau-funded and operated schools.

Number of Respondents: 183.

Number of Responses: 14,554.

Frequency of Response: Quarterly, annually, or on occasion, depending on the item.

Estimated Time per Response: Ranges from 1/2 hour to 480 hours.

Estimated Total Annual Hour Burden: 27,355 hours.

Estimated Total Annual Non-Hour Dollar Cost: $0.

Dated: March 19, 2014.

John Ashley,

Acting Assistant Director for Information Resources.

[FR Doc. 2014–06553 Filed 3–24–14; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMTC 00900.L16100000.DP0000]

Notice of Public Meeting, Eastern Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Dakotas

Resource Advisory Council (RAC) will meet as indicated below.

DATES: The next regular meeting of the Dakotas RAC will be held on April 16, 2014 in Bowman, North Dakota. The meeting will start at 9:00 a.m. and adjourn at approximately 4:30 p.m.

ADDRESSES: Bowman City Offices, 101 First Street Northeast, Bowman, North Dakota.

FOR FURTHER INFORMATION CONTACT: Mark Jacobsen, Public Affairs Specialist, BLM Eastern Montana/Dakotas District, 111 Garryowen Road, Miles City, Montana, 59301; (406) 233–2831; *mark_jacobsen@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–677–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member council advises the Secretary of the Interior through the BLM on a variety of planning and management issues associated with public land management in Montana. At this meeting, topics will include: North Dakota and South Dakota Field Office manager updates, Resource Management Plan updates, North Dakota Resource Management Plan Greater Sage-Grouse Amendment updates, new member introductions, council member briefings and other issues that the council may raise. All meetings are open to the public and the public may present written comments to the council. Each formal RAC meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations should contact the BLM as provided above.

Dated: March 14, 2014.

Diane M. Friez,

Dakotas District Manager—Eastern Montana.

[FR Doc. 2014–06560 Filed 3–24–14; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNML00000 L12200000.DF0000 14XL1109AF]

Notice of Public Meeting, Las Cruces District Resource Advisory Council Meeting, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the Bureau of Land Management's (BLM) Las Cruces District Resource Advisory Council (RAC) will meet as indicated below.

DATES: The RAC will meet on April 17, 2014, at the BLM Las Cruces District Office Main Conference Room from 9 a.m.–4 p.m. The public may send written comments to the RAC at the BLM Las Cruces District Office, 1800 Marquess Street, Las Cruces, NM 88005.

FOR FURTHER INFORMATION CONTACT: Rena Gutierrez, BLM Las Cruces District, 1800 Marquess Street, Las Cruces, NM, 88005, 575–525–4338. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8229 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 10-member Las Cruces District RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in New Mexico. Planned agenda items include a discussion on transportation planning and off-highway vehicles; an illegal dumping update (rollout of new and ''NoThrow'' smart device application); a budget update from the BLM Las Cruces District Manager; updates on ongoing issues and planning efforts; and a presentation on the upcoming TriCounty Resource Management Plan Supplement.

A half-hour public comment period during in which the public may address the RAC will begin at 3 p.m. All RAC meetings are open to the public. Depending on the number of individuals wishing to comment and time available, the time for individual oral comments may be limited.

Bill Childress,

District Manager, Las Cruces.

[FR Doc. 2014–06498 Filed 3–24–14; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[14XL LLIDB00100 LF1000000.HT0000 LXSS024D0000 241A 4500063224]

Notice of Public Meeting, Gateway West Project Subcommittee of the Resource Advisory Council to the Boise District, Bureau of Land Management, U.S. Department of the Interior

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Gateway West Project Subcommittee of the Boise District Resource Advisory Council (RAC), will hold meetings as indicated below.

DATES: The meetings will be held on April 18, 2014, and April 30, 2014, at the Boise District Office located at 3948 Development Avenue, Boise, ID 83705, beginning at 9:00 a.m. and adjourning at 3:00 p.m. Members of the public are invited to attend. There will be a public comment period at each meeting.

FOR FURTHER INFORMATION CONTACT: Marsha Buchanan, Supervisory Administrative Specialist and RAC Coordinator, BLM Boise District, 3948 Development Ave., Boise, ID 83705, Telephone (208) 384–3364.

SUPPLEMENTARY INFORMATION: The Gateway West Project Subcommittee advises the Boise District Resource Advisory Council on matters of planning and management of the Gateway West Project (segments 8 and 9). The Boise District Resource Advisory Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in southwestern Idaho. The subcommittee will be discussing proposed routes of the Gateway West transmission line segments 8 and 9. Agenda items and location may change due to changing circumstances. The public may present written or oral

comments to members of the Subcommittee.

It is possible that the Subcommittee will not need all of the scheduled meetings to complete its work. If one or more of the meetings announced in the DATES section above are cancelled, announcements will be made through local media outlets and on the BLM Idaho Web site, *http://www.blm.gov/id*.

Individuals who plan to attend and need special assistance should contact the BLM Coordinator as provided above. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

James M. Fincher,

BLM Boise District Manager.

[FR Doc. 2014–06499 Filed 3–24–14; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NER–PAGR–15077; PPNEPAGR00/PMP00UP05.YP0000, PX.P0156924I]

Amendment of Paterson Great Falls National Historical Park Advisory Commission Meeting Location and Time

AGENCY: National Park Service, Interior.

ACTION: Notice of amendment of meeting location and time.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. Appendix 1–16), notice is hereby given of the change in time and location for the April 10, 2014, meeting of the Paterson Great Falls National Historical Park Advisory Commission.

DATES: The meeting time originally published on December 26, 2013, in the **Federal Register**, 78 FR 78381, has been changed. The new meeting time will be Thursday, April 10, 2014, from 6:00 p.m. until 9:00 p.m.

Location: The meeting location originally published in the December 26, 2013, **Federal Register**, 78 FR 78381, has been changed. The new meeting location is the Cohen Lounge in Dickson Hall, Montclair State University, Montclair, New Jersey. Directions can be found on Montclair State University's Web site: *http://www.montclair.edu/chss/inserra-chair/directions/cohen-lounge/*.

FOR FURTHER INFORMATION CONTACT: Darren Boch, Superintendent, Paterson Great Falls National Historical Park, 72 McBride Avenue, Paterson, NJ 07501, (973) 523–2630.

SUPPLEMENTARY INFORMATION: The Paterson Great Falls National Historical Park Advisory Commission was authorized by Congress and signed by the President on March 30, 2009, (Pub. L. 111–11, Title VII, Subtitle A, Section 7001, Subsection e), ''to advise the Secretary in the development and implementation of the management plan.'' Topics to be discussed in this meeting include updates on the status of the Paterson Great Falls NHP General Management Plan.

The meeting will be open to the public and time will be reserved during the meeting for public comment. Oral comments will be summarized for the record. If individuals wish to have their comments recorded verbatim, they must submit them in writing. Written comments and requests for agenda items may be sent to: Federal Advisory Commission, Paterson Great Falls National Historical Park, 72 McBride Avenue, Paterson, NJ 07501.

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. All comments will be made part of the public record and will be electronically distributed to all Committee members.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2014–06552 Filed 3–24–14; 8:45 am]

BILLING CODE 4310–WV–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–512 and 731–TA–1248 (Preliminary)]

Carbon and Certain Alloy Steel Wire Rod From China

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China of carbon and certain alloy steel wire rod, provided for in subheadings 7213.91, 7213.99, 7227.20, and 7227.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV''), and allegedly subsidized by the Government of China.[2]

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On January 31, 2014, a petition was filed with the Commission and Commerce by ArcelorMittal USA LLC, Chicago, IL; Charter Steel, Saukville, WI; Evraz Rocky Mountain Steel,[3] Pueblo, CO; Gerdau Ameristeel US Inc., Tampa, FL; Keystone Consolidated Industries, Inc., Dallas, TX; and Nucor Corporation, Charlotte, NC, alleging that an industry in the United States is materially injured or threatened with

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Shara L. Aranoff did not participate in these investigations.

[3] On January 31, 2014, Evraz Rocky Mountain Steel became Evraz Pueblo.

material injury by reason of LTFV and subsidized imports of carbon and certain alloy steel wire rod from China. Accordingly, effective January 31, 2014, the Commission instituted countervailing duty investigation No. 701–TA–512 and antidumping duty investigation No. 731–TA–1248 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 6, 2014 (79 FR 7225). The conference was held in Washington, DC, on February 21, 2014, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on March 20, 2014.[4] The views of the Commission are contained in USITC Publication 4458 (March 2014), entitled *Carbon and Certain Alloy Steel Wire Rod from China: Investigation Nos. 701–TA–512 and 731–TA–1248 (Preliminary).*

By order of the Commission.

Issued: March 20, 2014.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2014–06522 Filed 3–24–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–896]

Certain Thermal Support Devices for Infants, Infant Incubators, Infant Warmers, and Components Thereof

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 7) granting a joint motion to terminate the above-captioned investigation based on a settlement agreement. The investigation is terminated.

[4] The Commission has the authority to toll statutory deadlines during a period when the government is closed. Because the Commission was closed on February 13, March 3, and March 17, 2014 due to inclement weather in Washington, DC, the statutory deadline may be tolled by up to three days.

FOR FURTHER INFORMATION CONTACT: Clark S. Cheney, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2661. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on October 3, 2013, based on a complaint filed by Draeger Medical Systems, Inc., of Telford, Pennsylvania (''Draeger''). 78 FR 61383 (Oct. 3, 2013). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain thermal support devices for infants, infant incubators, infant warmers, and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 6,483,080 and 7,335,157. The notice of investigation named Atom Medical International, Inc., of Tokyo, Japan (''Atom'') as the sole respondent.

On February 5, 2014, Draeger and Atom jointly moved to terminate the investigation based upon a settlement agreement. On February 12, 2014, the Commission investigative attorney filed a response in support of the motion.

On February 14, 2014, the ALJ issued the subject ID granting the motion to terminate the investigation. The ALJ determined that the parties stated there are no agreements between the parties concerning the subject matter of this investigation other than the settlement agreement between Draeger and Atom. The ALJ further determined that the parties filed a public version of the settlement agreement in accordance with the Commission's rules. The ALJ also determined that there is no indication that termination of this investigation based on the settlement agreement would have an adverse impact on the public interest. No petitions for review of the ID were filed.

The Commission has determined not to review the ID. The investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Issued: March 19, 2014.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2014–06429 Filed 3–24–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–876]

Certain Microelectromechanical Systems (''MEMs Devices'') and Products Containing the Same

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 65) by the presiding administrative law judge (''ALJ'') terminating the investigation in its entirety based on a settlement agreement. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Clark S. Cheney, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2661. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 15, 2013, based on a complaint filed by STMicroelectronics, Inc., of Coppell, Texas (''STMicro''). 78 *FR* 22293 (April 15, 2013). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain microelectromechanical systems (''MEMs Devices'') and products containing the same by reason of infringement of five U.S. patents. The notice of investigation names InvenSense, Inc., of Sunnyvale, California (''InvenSense''); Roku, Inc, of Saratoga, California (''Roku''); and Black & Decker, Inc., of New Britain, Connecticut (''Black & Decker''), as respondents.

On February 28, 2014, the ALJ issued an ID (Order No. 65) granting a joint motion by STMicro, InvenSense, and Black & Decker to terminate the investigation in its entirety. The motion is based on a settlement agreement and a patent cross-license agreement between STMicro and InvenSense. The ALJ found that there are no other agreements between the parties concerning the subject of the investigation and that the parties had complied with the Commission's rules for termination based on a settlement agreement. The ALJ also stated that terminating the investigation by settlement would not be contrary to the public interest and will conserve public and private resources. Accordingly, the ALJ determined that the investigation should be terminated in its entirety. No petitions for review of the ID were filed.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Issued: March 19, 2014.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2014–06428 Filed 3–24–14; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–NEW]

Agency Information Collection Activities; Proposed New eCollection eComments Requested; 2013 National Survey of Tribal Court Systems

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until May 27, 2014.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Steven W. Perry, Statistician, Bureau of Justice Statistics, 810 Seventh Street NW., Washington, DC 20531 (phone: 202–307–0777).

SUPPLEMENTARY INFORMATION: This process is conducted in accordance with 5 CFR 1320.10. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New data collection, National Survey of Tribal Courts Systems (NSTCS), 2013

(2) *The title of the Form/Collection:* 2013 National Survey of Tribal Court Systems or NSTCS–13.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form labels include NSTCS–13L48; NSTCS–13AK; and NSTCS–13CFR. The applicable component within the Department of Justice is the Bureau of Justice Statistics, Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* This information collection is a census of tribal court systems that operated in Indian country during the period 2013. The Bureau of Justice Statistics (BJS) proposes to implement a National Survey of Tribal Courts (NSTCS). Tribal courts are diverse, with some being extensively elaborate in their development, some based on traditional or indigenous customs, and others are just beginning to develop a modern judicial system. Over the past decade, various legislation, including the Tribal Law and Order Act of 2010 and Violence against Women Reauthorization Act of 2013, have sought to improve public safety in Indian country through increased sentencing authority and expanded jurisdiction. Existing information on tribal courts is extremely dated or was conducted with a narrow focus and did not include the three distinctive areas of tribal courts; the lower 48 States, Alaska, and the Courts of Indian Offenses. No reliable and recurring data are collected on the volume of criminal and civil cases handle in tribal courts annually. Hence, the NSTCS will provide national level information on the administration and operation of trial and appellate courts in Indian country. The NSTCS is designed to provide BJS and other interested stakeholders with current empirical information on tribal court systems. A goal of the NSTCS is to obtain national statistics on staffing; budgets; prosecution, public defense and civil legal services; juvenile justice; domestic violence and protection orders; enhance sentencing and jurisdiction capacity; and criminal justice database access and reporting. This will help BJS generate aggregate statistics on the magnitude and types of cases handled in tribal courts, as well establish baseline measures for

comparisons in future iterations. Information will be collected for calendar year 2013.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 300 respondents (tribal courts) will take part in the National Survey of Tribal Courts Systems 2013. Based on pilot testing an average of 2 hours each is needed to complete the form appropriate for the tribal system: NSTCS–13L48, NSTCS–13AK, or NSTCS–13CFR. The estimated range of burden for respondents is expected to be between 1.5 to 2.5 hours for completion. The following factors were considered when creating the burden estimate: the estimated total number of tribal courts, the ability of tribal courts to access or gather the data, and the information systems capabilities generally found within Indian country. BJS estimates that nearly all of the approximately 300 respondents will fully complete the questionnaire.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 600 hours. It is estimated that respondents will take 2 hours to complete a questionnaire. The burden hours for collecting respondent data sum to 600 hours (300 respondents × 2 hours = 600 hours).

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Suite 3W–1407B, Washington, DC 20530.

Dated: March 19, 2014.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2014–06442 Filed 3–24–14; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection: Salt Lake City Police Department HOST Project Stakeholder Survey

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until May 27, 2014.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Kimberly Brummett, Program Specialist, Office of Community Oriented Policing Services, 145 N Street NE., Washington, DC 20530 (phone: 202–353–9769).

SUPPLEMENTARY INFORMATION: This process is conducted in accordance with 5 CFR 1320.10. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Office of Community Oriented Policing Services, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

1 *Type of Information Collection:* New collection.

2 *The Title of the Form/Collection:* Salt Lake City Police Department HOST Project Stakeholder Survey.

3 *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The applicable component within the Department of Justice is the Office of Community Oriented Policing Services.

4 *Affected public who will be asked or required to respond, as well as a brief abstract:* This information collection is a survey of the stakeholders of the Salt Lake City Police Department's HOST Project to combat panhandling in their jurisdiction. Salt Lake City Police Department is a grantee of the Office of Community Oriented Policing Services, and the survey will support the work they are doing with the grant. Stakeholders who will be surveyed include law enforcement officers and staff, Volunteers of America, clinic workers, NGO staff, businesses and general community members.

5 *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 75 stakeholders will take part in the Salt Lake City Police Department HOST Project Stakeholder Survey. The estimated range of burden for respondents is expected to be between 15–20 minutes for completion.

6 *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 24.75 hours. It is estimated that respondents will take 20 minutes to complete the survey. The burden hours for collecting respondent data sum to 24.75 hours (75 respondents × .33 hours = 24.75 hours).

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., 3W–1407B, Washington, DC 20530.

Dated: March 20, 2014.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2014–06501 Filed 3–24–14; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On March 20, 2014, the Department of Justice lodged a proposed consent decree with the United States District Court for the Eastern District of Texas in the lawsuit entitled *United States* v. *Flint Hills Resources Port Arthur, LLC,* Civil Action No. 1:14CV169.

In the Complaint, the United States alleges that Flint Hills Resources Port Arthur, LLC (''Flint Hills'') violated, at its chemical plant in Port Arthur, Texas, various provisions of the Clean Air Act, 42 U.S.C. 7401 *et seq.* relating to the operation of flares, leak detection and repair practices, and benzene waste operations activities.

Under the consent decree, Flint Hills will implement innovative pollution control technologies to reduce emissions of volatile organic compounds (''VOCs'') and hazardous air pollutants from the two main flares and one back-up flare that operate at the Port Arthur facility. Flint Hills will operate systems that will recover and recycle waste gas back into plant processes (*i.e.,* flare gas recovery) and, for waste gas that is flared, Flint Hills will operate numerous monitoring systems and comply with several operating parameters to ensure that the flares adequately combust the gases. Flint Hills also will install ''low emissions'' valve technology and enhance its work practices relating to detecting and repairing leaks of VOCs from valves, pumps, and other equipment at the Port Arthur facility. Finally, the proposed Consent Decree requires Flint Hills to implement measures to minimize emissions of benzene from wastewater, to perform two community projects at a cost of $2.35 million, and to pay a civil penalty of $350,000.

The publication of this notice opens a period of public comment on the consent decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Flint Hills Resources Port Arthur, LLC,* D.J. Ref. No. 90–5–2–1–10070. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Acting Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check in the amount of $53.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Thomas P. Carroll,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2014–06513 Filed 3–24–14; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Information Collections Pertaining to Special Employment Under the Fair Labor Standards Act

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Wage and Hour Division (WHD) sponsored information collection request (ICR) titled, ''Information Collections Pertaining to Special Employment Under the Fair Labor Standards Act,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq.

DATES: Submit comments on or before April 24, 2014.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201309-1235-002* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–WHD, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–6881 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authorization for the information collections pertaining to the Fair Labor Standards Act, 29 U.S.C. 201, et seq., special employment provisions. These provisions relate to restrictions on industrial homework and to the use of special certificates that allow for the employment of categories of workers who may be paid less than the statutory minimum wage to the extent necessary to prevent curtailment of their employment opportunities.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1235–0001.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on March 31, 2014. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 3, 2013 (78 FR 72716).

Interested parties are encouraged to send comments to the OMB, Office of

Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1235–0001. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–WHD.

Title of Collection: Information Collections Pertaining to Special Employment Under the Fair Labor Standards Act.

OMB Control Number: 1235–0001.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 339,757.

Total Estimated Number of Responses: 1,346,240.

Total Estimated Annual Time Burden: 686,307 hours.

Total Estimated Annual Other Costs Burden: $1,640.

Dated: March 18, 2014.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2014–06488 Filed 3–24–14; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Engineering Advisory Committee Meeting #1170

Date/Time: April 23, 2014: 8:30 a.m. to 5:30 p.m. April 24, 2014: 8:30 a.m. to 2:30 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 1235, Arlington, Virginia 22230

Type of Meeting: Open.

Contact Person: Deborah Young, National Science Foundation, 4201 Wilson Boulevard, Suite 505, Arlington, Virginia 22230; 703–292–8300

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to engineering programs and activities.

Agenda:

Wednesday, April 23, 2014 8:30 a.m. to 5:30 p.m.

- Review Recommendations of Recent Advisory Committee Meetings
- Directorate for Engineering Update
- Assistant Director Discussion on Convergence
- Transparency and Accountability
- Service Innovation
- RIPS
- 2–DARE (Emerging Frontiers in Research and Innovation)
- Industrial Innovation and Partnerships Committee of Visitors Report

Thursday, April 24, 2014 8:30 a.m.–2:30 p.m.

- Perspectives from the Office of the Director
- NSF Strategic Plan
- IUSE—EHR and RED—EEC
- Engineering Education and Centers Committee of Visitors Report
- AdCom Member Topics
- Closing Remarks, and Wrap Up

Dated: March 20, 2014.

Suzanne Plimpton,

Acting Committee Management Officer.

[FR Doc. 2014–06477 Filed 3–24–14; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Public Availability of the National Science Foundation FY 2013 Service Contract Inventory and Associated Documents

AGENCY: National Science Foundation.

ACTION: Notice of Public Availability of FY 2013 Service Contract Inventories and Associated Documents.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), the National Science Foundation is publishing this notice to advise the public of the availability of (1) the FY 2013 Service Contract Inventory, (2) Analysis Report of the 2012 Service Contract Inventory and (3) the Plan for Analyzing the 2013 Service Contract Inventory. This inventory provides information on service contract actions over $25,000 that were made in FY 2013. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010, and December 19, 2011, by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf* and *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventory-guidance.pdf.* The National Science Foundation has posted its (1) FY 2013 inventory and a summary of the inventory, (2) FY 2012 inventory analysis report, and (3) FY 2013 inventory planned analysis report on the National Science Foundation homepage at the following links: *http://www.nsf.gov/publications/pub_summ.jsp?ods_key=nsf14042; http://www.nsf.gov/publications/pub_summ.jsp?ods_key=nsf14050 ; http://www.nsf.gov/publications/pub_summ.jsp?ods_key=nsf14051.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Richard Pihl in the BFA/DACS at 703–292–7395 or *rpihl@nsf.gov.*

Dated: March 19, 2014.

Suzanne Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2014–06430 Filed 3–24–14; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0001]

Sunshine Act Meeting Notice

DATES: Weeks of March 24, 31, April 7, 14, 21, 28, 2014.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of March 24, 2014

There are no meetings scheduled for the week of March 24, 2014.

Week of March 31, 2014—Tentative

There are no meetings scheduled for the week of March 31, 2014.

Week of April 7, 2014—Tentative

Thursday April 10, 2014

9:00 a.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: Cindy Flannery, 301–415–0223)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/*.

Week of April 14, 2014—Tentative

There are no meetings scheduled for the week of April 14, 2014.

Week of April 21, 2014—Tentative

There are no meetings scheduled for the week of April 21, 2014.

Week of April 28, 2014—Tentative

There are no meetings scheduled for the week of April 28, 2014.

* * * * *

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html*.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, or by email at *Kimberly.Meyer-Chambers@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *Darlene.Wright@nrc.gov*.

Dated: March 20, 2014.

Rochelle Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2014–06582 Filed 3–21–14; 11:15 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Liability for Termination of Single-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Correction.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) published a notice document in the **Federal Register** on March 17, 2014 (at 79 FR 14756), informing the public of its request that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of a collection of information contained in its regulation on Liability for Termination of Single-Employer Plans (OMB control number 1212–0017; expires March 31, 2014). This document corrects an inadvertent error in that notice.

FOR FURTHER INFORMATION CONTACT: Dan Liebman, Regulatory Affairs Group, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026, *liebman.daniel@pbgc.gov* or 202–326–4400, ext. 6510. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024).

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation published a notice document in the **Federal Register** on March 17, 2014 (at 79 FR 14756), informing the public of its request that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of a collection of information contained in its regulation on Liability for Termination of Single-Employer Plans (OMB control number 1212–0017; expires March 31, 2014). The notice contains an inadvertent error.

The last paragraph in the second column on page 14756 should have read as follows: PBGC estimates that an average of thirty contributing sponsors or controlled group members per year will respond to this collection of information. PBGC further estimates that the average annual burden of this collection of information will be six hours and $2,100 per respondent, with an average total annual burden of 180 hours and $63,000.

Issued in Washington, DC, on this 19th day of March 2014.

Catherine B. Klion,

Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2014–06511 Filed 3–24–14; 8:45 am]

BILLING CODE 7709–02–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2014–22 and CP2014–37; Order No. 2027]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing requesting the addition of Priority Mail Express, Priority Mail & First-Class Package Service Contract 2 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:* March 26, 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: Brian Corcoran, Acting General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Express, Priority Mail, and First-Class Package Service Contract 2 to the competitive product list.[1] The Postal Service asserts that Priority Mail Express, Priority Mail, and First-Class Package Service Contract 2 is a competitive product ''not of general applicability'' within the meaning of 39

[1] Request of the United States Postal Service to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 2 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, March 18, 2014 (Request).

U.S.C. 3632(b)(3). Request at 1. The Request has been assigned Docket No. MC2014–22.

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. The instant contract has been assigned Docket No. CP2014–37.

Request. To support its Request, the Postal Service filed six attachments: a copy of the contract, a redacted copy of Governors' Decision No. 11–6, 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.

In the Statement of Supporting Justification, the Postal Service asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. It contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract will expire 3 years from the effective date unless, among other things, either party terminates the agreement upon 90 days' written notice to the other party or the agreement is renewed by mutual written agreement. *Id.* at 4. The contract also allows two 90-day extensions of the agreement if the preparation of a successor agreement is active and the Commission is notified within at least 7 days of the contract's expiration date. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a).[2]

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the Governors' Decision, contract, customer-identifying information, and related financial information, should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2014–22 and CP2014–37 to consider the Request pertaining to the proposed Priority Mail Express, Priority Mail, and First-Class Package Service Contract 2 product and the related contract, respectively.

Interested persons may submit 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 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than March 26, 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. MC2014–22 and CP2014–37 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 by interested persons in these proceedings are due no later than March 26, 2014.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2014–06439 Filed 3–24–14; 8:45 am]

BILLING CODE 7710–FW–P

[2] Although the Request appears to state that the certification only pertains to paragraphs (1) and (3) of 39 U.S.C. 3633(a), the certification itself contains an assertion that the prices are in compliance with 39 U.S.C. 3633(a)(1), (2), and (3). *See* Request at 2; Attachment E.

POSTAL REGULATORY COMMISSION

[Docket No. CP2012–23; Order No. 2026]

Amendments to Postal Contract

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing an amendment to Parcel Select Contract 2. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 26, 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: Brian Corcoran, Acting General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

I. Introduction

On March 18, 2014, the Postal Service filed notice that it has agreed to an amendment to the existing Parcel Select Contract 2 subject to this docket.[1] The Postal Service includes two attachments in support of its Notice:

- Attachment A—A redacted copy of the amendment to the existing Parcel Select Contract 2.
- Attachment B—A certification of compliance with 39 U.S.C. 3633(a), as required by 39 CFR 3015.5.

The Postal Service also filed the unredacted amendment and supporting financial workpapers under seal. The Postal Service seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of the information that it has filed under seal. *Id.* 1.

The amendment changes the agreement's prices and amends Terms I.B, I.C, I.D, I.E, and I.G of the initial agreement. *Id.,* Attachment A at 1–4. The amendment is effective one business day after the day on which the Commission issues all necessary regulatory approval. *Id.* 1.

II. Notice of Filings

Interested persons may submit 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 March 26, 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

[1] Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Parcel Select Contract 2, March 18, 2014 (Notice).

interests of the general public (Public Representative) in this case.

III. Ordering Paragraphs

It is ordered:

1. The Commission reopens Docket No. CP2012–23 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 March 26, 2014.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2014–06434 Filed 3–24–14; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, & First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* March 25, 2014.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on March 18, 2014, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Express, Priority Mail, & First-Class Package Service Contract 2 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2014–22, CP2014–37.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2014–06446 Filed 3–24–14; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collection of information to determine (1) the practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

1. Title and purpose of information collection: Application and Claim for Unemployment Benefits and Employment Service; OMB 3220–0022.

Section 2 of the Railroad Unemployment Insurance Act (RUIA), provides unemployment benefits for qualified railroad employees. These benefits are generally payable for each day of unemployment in excess of four during a registration period (normally a period of 14 days).

Section 12 of the RUIA provides that the RRB establish, maintain and operate free employment facilities directed toward the reemployment of railroad employees. The procedures for applying for the unemployment benefits and employment service and for registering and claiming the benefits are prescribed in 20 CFR 325.

The RRB utilizes the following forms to collect the information necessary to pay unemployment benefits: Form UI–1 (or its Internet equivalent, Form UI–1 (Internet)), *Application for Unemployment Benefits and Employment Service,* is completed by a claimant for unemployment benefits once in a benefit year, at the time of first registration. Completion of Form UI–1 or UI–1 (Internet) also registers an unemployment claimant for the RRB's employment service.

The RRB also utilizes Form UI–3, (or its Internet equivalent Form UI–3 (Internet)) *Claim for Unemployment Benefits* for use in claiming unemployment benefits for days of unemployment in a particular registration period, normally a period of 14 days.

Completion of Forms UI–1, UI–1 (Internet), UI–3 and UI–3 (Internet) is required to obtain or retain benefits. The number of responses required of each claimant varies, depending on their period of unemployment.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (79 FR 415 on January 3, 2014) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Application and Claim for Unemployment Benefits and Employment Service.

OMB Control Number: 3220–0022.

Forms submitted: UI–1, UI–1 (Internet), UI–3, UI–3 (Internet).

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or Households.

Abstract: Under Section 2 of the Railroad Unemployment Insurance Act, unemployment benefits are provided for qualified railroad employees. The collection obtains the information needed to determine the eligibility to and amount of such benefits for railroad employees.

Changes proposed: The RRB proposes no changes to the forms in the collection.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
UI–1	6,817	10	1,136
UI–1 (Internet)	3,490	10	582
UI–3	51,996	6	5,200

Form No.	Annual responses	Time (minutes)	Burden (hours)
UI–3 (Internet)	36,286	6	3,629
Total	98,589		10,547

2. Title and purpose of information collection: Railroad Unemployment Insurance Act Applications; OMB 3220–0039.

Under Section 2 of the Railroad Unemployment Insurance Act (RUIA), sickness benefits are payable to qualified railroad employees who are unable to work because of illness or injury. In addition, sickness benefits are payable to qualified female employees if they are unable to work, or if working would be injurious, because of pregnancy, miscarriage, or childbirth. Under Section 1(k) of the RUIA, a statement of sickness for the days the employee was sick and not able to work, is to be filed with the RRB within a 10-day period from the first day claimed as a day of sickness. The RRB's authority for requesting supplemental medical information is Sections 12(i) and 12(n) of the RUIA. The procedures for claiming sickness benefits and for the RRB to obtain supplemental medical information needed to determine a claimant's eligibility for such benefits are prescribed in 20 CFR Part 335.

The forms currently used by the RRB to obtain information needed to determine eligibility for and the amount of sickness benefits due a claimant are as follows: Form SI–1A, Application for Sickness Benefits; Form SI–1b, Statement of Sickness; Form SI–3, Claim for Sickness Benefits; Form SI–7, Supplemental Doctor's Statement; Form SI–8, Verification of Medical Information; Form ID–7H, Non-Entitlement to Sickness Benefits and Information on Unemployment Benefits; Form ID–11A, Notice of Late Filing; and Form ID–11B, Notice of Insufficient Medical and Late Filing. Completion is required to obtain or retain benefits. One response is requested of each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (78 57421 on September 18, 2013) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Railroad Unemployment Insurance Act Applications.

OMB Control Number: 3220–0039.

Form(s) submitted: SI–1a, SI–1b, SI–3, SI–3 (Internet), SI–7, SI–8, ID–7H, ID–11A and ID–11B.

Type of request: Revision of a currently approved collection.

Affected public: Individuals or Households.

Abstract: Under Section 2 of the Railroad Unemployment Insurance Act, sickness benefits are payable to qualified railroad employees who are unable to work because of illness or injury. The collection obtains information from railroad employees and physicians needed to determine eligibility to and the amount of such benefits.

Changes proposed: The RRB proposes to delete Forms ID–7H and ID–11B from the information collection due to less than ten responses per year.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
SI–1a (Employee)	16,000	10	2,667
SI–1b (Doctor)	16,000	8	2,133
SI–3 (Manual)	126,490	5	10,541
SI–3 (Internet)	33,443	5	2,787
SI–7	21,472	8	2,863
SI–8	26	5	2
ID–11A	518	4	35
Total	213,949		21,028

3. Title and purpose of information collection: Public Service Pension Questionnaires; OMB 3220–0136.

Public Law 95–216 amended the Social Security Act of 1977 by providing, in part, that spouse or survivor benefits may be reduced when the beneficiary is in receipt of a pension based on employment with a Federal, State, or local governmental unit. Initially, the reduction was equal to the full amount of the government pension.

Public Law 98–21 changed the reduction to two-thirds of the amount of the government pension. Public Law 108–203 amended the Social Security Act by changing the requirement for exemption to public service offset, that Federal Insurance Contributions Act (FICA) taxes be deducted from the public service wages for the last 60 months of public service employment, rather than just the last day of public service employment.

Sections 4(a)(1) and 4(f)(1) of the Railroad Retirement Act (RRA) provides that a spouse or survivor annuity should be equal in amount to what the annuitant would receive if entitled to a like benefit from the Social Security Administration. Therefore, the public service pension (PSP) provisions apply to RRA annuities. RRB regulations pertaining to the collection of evidence relating to public service pensions or worker's compensation paid to spouse or survivor applicants or annuitants are found in 20 CFR 219.64c.

The RRB utilizes Form G–208, Public Service Pension Questionnaire, and Form G–212, Public Service Monitoring Questionnaire, to obtain information used to determine whether an annuity reduction is in order. Completion of the forms is voluntary. However, failure to complete the forms could result in the nonpayment of benefits. One response is requested of each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (79 FR 676 on January 6, 2014) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Public Service Pension Questionnaires.

OMB Control Number: 3220–0136.
Forms submitted: G–208 and G–212.
Type of request: Extension without change of a currently approved collection.
Affected public: Individuals or Households.

Abstract: A spouse or survivor annuity under the Railroad Retirement Act may be subjected to a reduction for a public service pension. The questionnaires obtain information needed to determine if the reduction applies and the amount of such reduction.

Changes proposed: The RRB proposes no changes to the forms in the collection.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–208	70	16	19.0
G–212	1,100	15	275.0
Total	1,170		294.0

4. Title and purpose of information collection: Representative Payee Monitoring; OMB 3220–0151.

Under Section 12 of the Railroad Retirement Act (RRA), the RRB may pay annuity benefits to a representative payee when an employee, spouse, or survivor annuitant is incompetent or a minor. The RRB is responsible for determining if direct payment to an annuitant or a representative payee would best serve the annuitant's best interest. The accountability requirements authorizing the RRB to conduct periodic monitoring of representative payees, including a written accounting of benefit payments received, are prescribed in 20 CFR 266.7. The RRB utilizes the following forms to conduct its representative payee monitoring program.

Form G–99a, *Representative Payee Report,* is used to obtain information needed to determine whether the benefit payments certified to the representative payee have been used for the annuitant's current maintenance and personal needs and whether the representative payee continues to be concerned with the annuitant's welfare. RRB Form G–99c, *Representative Payee Evaluation Report,* is used to obtain more detailed information from a representative payee who fails to complete and return Form G–99a or in situations when the returned Form G–99a indicates the possible misuse of funds by the representative payee. Form G–99c contains specific questions concerning the representative payee's performance and is used by the RRB to determine whether or not the representative payee should continue in that capacity. Completion of the forms in this collection is required to retain benefits.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (79 FR 416 on January 3, 2014) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Representative Payee Monitoring.
OMB Control Number: 3220–0151.
Forms submitted: G–99a and G–99c.
Type of request: Revision of a currently approved collection.
Affected public: Individuals or Households.

Abstract: Under Section 12(a) of the Railroad Retirement Act, the RRB is authorized to select, make payments to, and conduct transactions with an annuitant's relative or some other person willing to act on behalf of the annuitant as representative payee. The collection obtains information needed to determine if a representative payee is handling benefit payments in the best interest of the annuitant.

Changes proposed: Consistent with 20 CFR 266.4(g), which states that ''the RRB may consider whether a representative payee *has ever been convicted* of a felony or a misdemeanor under the statutes of the Board or the Social Security Act, or convicted of a felony under any other Federal or state law'' the RRB proposes the deletion of the limiting phrase ''within the past 15 years'' from Forms G–99a and G–99c. Other minor editorial changes are also proposed to both forms.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–99a (legal and all other, excepting parent for child)	5,400	18	1,620
G–99c (Parts I and II)	300	24	120
G–99c (Parts I, II, and III)	120	31	62
Total	5,820		1,802

5. Title and purpose of information collection: Report of Medicaid State Office on Beneficiary's Buy-In Status; OMB 3220–0185.

Under Section 7(d) of the Railroad Retirement Act, the RRB administers the Medicare program for persons covered by the railroad retirement system. Under Section 1843 of the Social Security Act, states may enter into ''buy-in agreements'' with the Secretary of Health and Human Services for the purpose of enrolling certain groups of low-income individuals under the Medicare medical insurance (Part B) program and paying the premiums for their insurance coverage. Generally, these individuals are categorically needy under Medicaid and meet the eligibility requirements for Medicare Part B. States can also include in their buy-in agreements, individuals who are eligible for medical assistance only. The RRB uses Form RL–380–F, Report to State Medicaid Office, to obtain information needed to determine if certain railroad beneficiaries are entitled to receive Supplementary Medical Insurance program coverage under a state buy-in agreement in states in which they reside. Completion of Form RL–380–F is voluntary. One response is received from each respondent.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (79 FR 676 on January 6,

2014) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Report of Medicaid State Office on Beneficiary's Buy-In Status.

OMB Control Number: 3220–0185.

Forms submitted: RL–380–F.

Type of request: Extension without change of a currently approved collection.

Affected public: State, Local, and Tribal Governments.

Abstract: Under the Railroad Retirement Act, the Railroad Retirement Board administers the Medicare program for persons covered by the railroad retirement system. The collection obtains the information needed to determine if certain railroad beneficiaries are entitled to receive Supplemental Medical Insurance program coverage under a state buy-in agreement in states in which they reside.

Changes proposed: The RRB proposes no changes to Form RL–380–F.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
RL–380–F	600	10	100

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV*.

Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or *Charles.Mierzwa@RRB.GOV* and to the OMB Desk Officer for the RRB, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*.

Charles Mierzwa,

Chief of Information Resources Management.

[FR Doc. 2014–06500 Filed 3–24–14; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–30985; File No. 812–14134]

PennantPark Investment Corp., et al.; Notice of Application

March 19, 2014.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d-1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d-1 under the Act.

Summary of Application: Applicants request an order to permit business development companies (each, a ''BDC'') and certain closed-end management investment companies to co-invest in portfolio companies with each other and with affiliated investment funds.

Applicants: PennantPark Investment Corporation (''PNNT''), PennantPark Floating Rate Capital Ltd. (''PFLT''), PennantPark Floating Rate Capital Funding I, LLC (''Funding I''), PennantPark SBIC LP (''SBIC I''), PennantPark SBIC II LP (''SBIC II''), PennantPark Credit Opportunities Fund, LP (''PCOF'') and PennantPark Investment Advisers, LLC (the ''Adviser'').

Filing Dates: The application was filed on March 15, 2013, and amended on August 7, 2013, December 5, 2013 and March 5, 2014. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 14, 2014, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F St. NE., Washington, DC 20549–1090. Applicants: 590 Madison Avenue, 15th Floor, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Counsel, at (202) 551–6915 or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Chief Counsel's Office, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. PNNT and PFLT are Maryland corporations organized as closed-end management investment companies that have elected to be regulated as BDCs under the Act (together, the ''PennantPark BDCs'').[1] PNNT's Objectives and Strategies[2] are to generate both current income and capital appreciation through debt and equity investments. PNNT invests primarily in U.S. middle-market companies in the form of senior secured loans, mezzanine debt and equity investments. PFLT's Objectives and Strategies are to generate current income and capital appreciation by investing primarily in floating rate loans and other investments made to U.S. private middle-market companies. A majority of the directors of each of PNNT and PFLT are not ''interested persons'' as defined in section 2(a)(19) of the Act of PNNT and PFLT, respectively (''Independent Directors'').

2. PCOF is a limited partnership organized under Delaware law and is excluded from the definition of investment company under section 3(c)(7) of the Act. PCOF's investment objectives are capital preservation, income generation and capital

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[2] ''Objectives and Strategies'' means a Regulated Fund's (defined below) investment objectives and strategies as described in the Regulated Fund's registration statement on Form N–2, other filings the Regulated Fund has made with the Commission under the Securities Act of 1933 (''Securities Act''), or under the Securities Exchange Act of 1934, and the Regulated Fund's reports to stockholders.

appreciation primarily through debt and/or equity investments generally in midsize companies in North America and Western Europe.

3. Funding I is a wholly-owned subsidiary of PFLT formed to enter into a credit facility. SBIC I and SBIC II, wholly-owned subsidiaries of PNNT, are Delaware limited partnerships operating as small business investment companies whose investment objectives are to generate both current income and capital appreciation through debt and equity investments. Each of Funding I, SBIC I and SBIC II is a Wholly-Owned Investment Subsidiary (as defined below).

4. PennantPark Investment Advisers, LLC, a Delaware limited liability company, is and any other Adviser will be registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''). PennantPark Investment Advisers, LLC serves as the investment adviser to PNNT, PFLT, PCOF and Funding I. PNNT advises SBIC I and SBIC II.[3]

5. Applicants seek an order (''Order'') to permit one or more Regulated Funds [4] and one or more Private Funds [5] to participate in the same investment opportunities through a proposed co-investment program where such participation would otherwise be prohibited under sections 17(d) and 57(a)(4) and rule 17d–1 (the ''Co-Investment Program'') by (a) co-investing with each other in certain securities of issuers (a ''portfolio company'') and (b) making additional investments in securities of issuers, including through the exercise of warrants, conversion privileges, and other rights to purchase securities of the issuers (''Follow-On Investments''). ''Co-Investment Transaction'' means any transaction in which a Regulated Fund (or a Wholly-Owned Investment Subsidiary (as defined below)) participated together with a Co-Investment Affiliate in reliance on the Order. ''Potential Co-Investment Transaction'' means any investment opportunity in which a Regulated Fund (or a Wholly-Owned Investment Subsidiary) could not participate together with one or more Co-Investment Affiliates without obtaining and relying on the Order.[6]

6. Applicants state that a Regulated Fund may, from time to time, form a special purpose subsidiary (a ''Wholly-Owned Investment Subsidiary'').[7] A Co-Investment Affiliate would be prohibited from investing in a Co-Investment Transaction with any Wholly-Owned Investment Subsidiary because the Wholly-Owned Investment Subsidiary would be a company controlled by a Regulated Fund for purposes of sections 17(d) and 57(a)(4) and rule 17d–1. Applicants request that a Wholly-Owned Investment Subsidiary be permitted to participate in Co-Investment Transactions in lieu of the parent Regulated Fund and that the Wholly-Owned Investment Subsidiary's participation in any such transaction be treated, for purposes of the Order, as though the applicable Regulated Fund were participating directly. Applicants represent that this treatment is justified because a Wholly-Owned Investment Subsidiary would have no purpose other than serving as a holding vehicle for a Regulated Fund's investments and, therefore, no conflicts of interest could arise between such Regulated Fund and the Wholly-Owned Investment Subsidiary. The board of directors of the applicable Regulated Fund would make all relevant determinations under the conditions with regard to a Wholly-Owned Investment Subsidiary's participation in a Co-Investment Transaction, and the board of directors would be informed of, and take into consideration, any proposed use of a Wholly-Owned Investment Subsidiary in the applicable Regulated Fund's place. If a Regulated Fund proposes to participate in the same Co-Investment Transaction with any of its Wholly-Owned Investment Subsidiaries, the board of directors will also be informed of, and take into consideration, the relative participation of the Regulated Fund and the Wholly-Owned Investment Subsidiary.

7. Applicants represent that the Advisers will refer all Potential Co-Investment Transactions that an investment adviser considers for a Co-Investment Affiliate, and that are within a Regulated Fund's Objectives and Strategies, to that Regulated Fund's Adviser. For each such referral, when selecting investments for a Co-Investment Affiliate, the applicable Adviser will consider only the investment objective, investment policies, investment position, Available Capital (as defined below), and other pertinent factors applicable to the respective Co-Investment Affiliate. The Adviser expects that a portfolio company that is an appropriate investment for one Co-Investment Affiliate may be an appropriate investment for another Co-Investment Affiliate, with certain exceptions based on available capital (''Available Capital'') [8] or diversification.

8. Other than pro rata dispositions and Follow-On Investments as provided in conditions 7 and 8, and after making the determinations required in conditions 1 and 2(a), the Adviser will present each Potential Co-Investment Transaction and the proposed allocation to the directors of the board eligible to vote under section 57(o) of the Act (''Eligible Directors''), and the ''required majority,'' as defined in section 57(o) of the Act (''Required Majority'') [9] of a Regulated Fund will approve each Co-Investment Transaction prior to any investment by a Regulated Fund.

9. With respect to the pro rata dispositions and Follow-On Investments provided in conditions 7 and 8, a

[3] Advisory personnel of the Adviser will act on behalf of PNNT in providing management services to SBIC I and SBIC II.

[4] ''Regulated Fund'' means the PennantPark BDCs and any management investment company (a) that is registered under the Act as a closed-end fund or has elected to be regulated as a BDC; (b) whose investment adviser is PennantPark Investment Advisers, LLC or any other adviser that is controlling, controlled by or under common control with PennantPark Investment Advisers, LLC (included in the term ''Adviser''); and (c) that intends to participate in the Co-Investment Program (as defined below).

[5] ''Private Fund'' means PCOF and any other entity (a) whose investment adviser is an Adviser; (b) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act; and (c) that intends to participate in the Co-Investment Program. The Private Funds, together with the Regulated Funds are referred to as the ''Co-Investment Affiliates.''

[6] All existing entities that currently intend to rely on the Order have been named as applicants. Any other existing or future entity that relies on the Order in the future will comply with the terms and conditions of the application.

[7] The term ''Wholly-Owned Investment Subsidiary'' means an entity (a) whose sole business purposes are to hold one or more investments and issue debt on behalf of a Regulated Fund (and, in the case of an SBIC Subsidiary (as defined below), maintain a license under the SBA Act (as defined below) and issue debentures guaranteed by the SBA (as defined below); (b) that is wholly-owned by such Regulated Fund (with such Regulated Fund at all times directly or indirectly holding, beneficially and of record, 100% of the voting and economic interests); (c) with respect to which the board of directors of the Regulated Fund has the sole authority to make all determinations with respect to the Wholly-Owned Investment Subsidiary's participation under the conditions of the application; and (d) that is an entity that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act. The term ''SBIC Subsidiary'' means a Wholly-Owned Investment Subsidiary that is licensed by the Small Business Administration (the ''SBA'') to operate under the Small Business Investment Act of 1958, as amended, (the ''SBA Act'') as a small business investment company (an ''SBIC'').

[8] ''Available Capital'' consists solely of liquid assets not held for permanent investment, including cash, amounts that can currently be drawn down from lines of credit, and marketable securities held for short-term purposes. In addition, Available Capital would include bona fide uncalled capital commitments that can be called by the settlement date of the Co-Investment Transaction.

[9] With respect to Regulated Funds that are not BDCs, the defined terms Eligible Directors and Required Majority apply as if each Regulated Fund were a BDC subject to section 57(o) of the Act.

Regulated Fund may participate in a pro rata disposition or Follow-On Investment without obtaining prior approval of the Required Majority if, among other things: (i) the proposed participation of each Co-Investment Affiliate in such disposition or Follow-On Investment is proportionate to its outstanding investments in the issuer immediately preceding the disposition or Follow-On Investment, as the case may be; and (ii) the board of directors of the Regulated Fund has approved that Regulated Fund's participation in pro rata dispositions and Follow-On Investments as being in the best interests of the Regulated Fund. If the board does not so approve, any such disposition or Follow-On Investment will be submitted to the Regulated Fund's Eligible Directors. The board of any Regulated Fund may at any time rescind, suspend or qualify its approval of pro rata dispositions and Follow-On Investments with the result that all dispositions and/or Follow-On Investments must be submitted to the Eligible Directors.

10. No Independent Director of a Regulated Fund will have a direct or indirect financial interest in any Co-Investment Transaction or any interest in a portfolio company other than through an interest (if any) in the securities of a Regulated Fund and none will participate individually in any Co-Investment Transaction.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d-1 under the Act prohibit affiliated persons of a registered investment company from participating in joint transactions with the company or a company controlled by such registered investment company unless the Commission has granted an order permitting such transactions. Section 57(a)(4) of the Act prohibits certain affiliated persons of a BDC from participating in joint transactions with the BDC (or a company controlled by such BDC) in contravention of rules as prescribed by the Commission. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to BDCs. Because the Commission has not adopted any rules under section 57(a)(4), rule 17d–1 applies.

2. Applicants submit that the Adviser and the Co-Investment Affiliates would be deemed to be persons related to a Regulated Fund in a manner described by sections 17(d) or 57(b) and therefore prohibited by sections 17(d) or 57(a)(4) and rule 17d–1 from participating in the Co-Investment Transactions without the Order.

3. Rule 17d–1 under the Act generally prohibits participation by a registered investment company, or a company controlled by such registered investment company, and an affiliated person (as defined in section 2(a)(3) of the Act) or principal underwriter for that investment company, or an affiliated person of such affiliated person or principal underwriter, in any joint enterprise or other joint arrangement or profit sharing plan, as defined in the rule, absent an order by the Commission. Similarly, rule 17d–1, as made applicable to BDCs by section 57(i), prohibits any person who is related to a BDC in a manner described in section 57(b), acting as principal, from participating in, or effecting any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which the BDC (or a company controlled by such BDC) is a participant, absent an order from the Commission. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

4. Applicants state that co-investment in portfolio companies by the Co-Investment Affiliates will increase favorable investment opportunities for the PennantPark BDCs and any other Regulated Fund. Applicants submit that the Required Majority's approval of each Co-Investment Transaction before investment, and other protective conditions set forth in the application, will ensure that the Regulated Funds will be treated fairly. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions will be consistent with the provisions, policies and purposes of the Act and on a basis that is not different from or less advantageous than that of other Co-Investment Affiliates.

Applicants' Conditions

Applicants agree that any Order granting the requested relief will be subject to the following conditions:

1. Each time an investment adviser of a Co-Investment Affiliate considers a Potential Co-Investment Transaction for any Co-Investment Affiliate that falls within a Regulated Fund's Objectives and Strategies, the Regulated Fund's Adviser will make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. (a) If the Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund;

(b) If the aggregate amount recommended by the Adviser to be invested by the Regulated Fund in the Potential Co-Investment Transaction, together with the amount proposed to be invested by each other Co-Investment Affiliate, collectively in the same transaction, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on each participating party's Available Capital in the asset class being allocated, up to the amount proposed to be invested by each. The Adviser will provide the respective Eligible Directors with information concerning each party's Available Capital to assist the Eligible Directors with their review of such Regulated Fund's investments for compliance with these allocation procedures; and

(c) After making the determinations required in conditions 1 and 2(a), the Adviser will distribute written information concerning the Potential Co-Investment Transaction, (including the amount proposed to be invested by each Co-Investment Affiliate), to the Eligible Directors for their consideration. The Regulated Fund will co-invest with one or more Co-Investment Affiliates only if, prior to participating in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) the terms of the transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its stockholders and do not involve overreaching in respect of the Regulated Fund or its stockholders on the part of any person concerned;

(ii) the transaction is consistent with:

(A) the interests of the stockholders of the Regulated Fund; and

(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by the Co-Investment Affiliates would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from or less advantageous than that of the Co-Investment Affiliates; provided, that, if any Co-Investment Affiliate, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors

or the right to have a board observer or any similar right to participate in the governance or management of the portfolio company, such event shall not be interpreted to prohibit the Required Majority from reaching the conclusions required by this condition (2)(c)(iii), if:

(A) the Eligible Directors will have the right to ratify the selection of such director or board observer, if any;

(B) the Adviser agrees to, and does, provide periodic reports to the Regulated Fund's board of directors with respect to the actions of the director or the information received by the board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and

(C) any fees or other compensation that any Co-Investment Affiliate or any affiliated person of any Co-Investment Affiliate receives in connection with the right of the Co-Investment Affiliate to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among the participating Co-Investment Affiliates (the Private Funds may, in turn, share their portion with their affiliated persons) and the Regulated Fund in accordance with the amount of each party's investment; and

(iv) the proposed investment by the Regulated Fund will not benefit the Adviser or the Co-Investment Affiliates or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by condition 13, (B) to the extent permitted by section 17(e) or 57(k) of the Act, as applicable; (C) indirectly, as a result of an interest in securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in condition 2(c)(iii)(C).

3. Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. The Adviser will present to the board of directors of each Regulated Fund, on a quarterly basis, a record of all investments in Potential Co-Investment Transactions made by the Co-Investment Affiliates during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies that were not made available to the Regulated Fund, and an explanation of why such investment opportunities were not offered to the Regulated Fund. All information presented to the board of directors pursuant to this condition will be kept for the life of the Regulated Fund and at least two years thereafter and will be subject to examination by the Commission and its staff.

5. Except for Follow-On Investments made in accordance with condition 8, the Regulated Fund will not invest in reliance on the Order in any issuer in which any Co-Investment Affiliate or any affiliated person of the Co-Investment Affiliates is an existing investor.

6. The Regulated Fund will not participate in any Potential Co-Investment Transaction unless the terms, conditions, price, class of securities to be purchased, settlement date, and registration rights will be the same for the Regulated Fund as for each participating Co-Investment Affiliate. The grant to a Co-Investment Affiliate, but not the Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this condition 6, if conditions 2(c)(iii)(A), (B) and (C) are met.

7. (a) If any Co-Investment Affiliate elects to sell, exchange or otherwise dispose of an interest in a security that was acquired in a Co-Investment Transaction, the Adviser will:

(i) notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed disposition at the earliest practical time; and

(ii) formulate a recommendation as to participation by each Regulated Fund in the disposition.

(b) Each Regulated Fund will have the right to participate in such disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the participating Co-Investment Affiliates.

(c) A Regulated Fund may participate in such disposition without obtaining prior approval of the Required Majority if: (i) The proposed participation of each Co-Investment Affiliate in such disposition is proportionate to its outstanding investment in the issuer immediately preceding the disposition; (ii) the board of directors of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such dispositions on a pro rata basis (as described in greater detail in the application); and (iii) the board of directors of the Regulated Fund is provided on a quarterly basis with a list of all dispositions made in accordance with this condition. In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(d) Each participating Co-Investment Affiliate will bear its own expenses in connection with any such disposition.

8. (a) If any Co-Investment Affiliate desires to make a Follow-On Investment in a portfolio company whose securities were acquired in a Co-Investment Transaction, the Adviser will:

(i) notify each Regulated Fund that participated in the Co-Investment Transaction of the proposed transaction at the earliest practical time; and

(ii) formulate a recommendation as to the proposed participation, including the amount of the proposed Follow-On Investment, by each Regulated Fund.

(b) A Regulated Fund may participate in such Follow-On Investment without obtaining prior approval of the Required Majority if: (i) the proposed participation of each Co-Investment Affiliate in such investment is proportionate to its outstanding investments in the issuer immediately preceding the Follow-On Investment; and (ii) the board of directors of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application). In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

(c) If, with respect to any Follow-On Investment:

(i) the amount of the opportunity is not based on the Co-Investment Affiliates' outstanding investments immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Adviser to be invested by the Regulated Fund in the Follow-On Investment, together with the amount proposed to be invested by the participating Co-Investment Affiliates in the same transaction, exceeds the amount of the opportunity; then the amount invested by each such party will be allocated among them pro rata based on each party's Available Capital in the asset class being allocated, up to the amount proposed to be invested by each.

(d) The acquisition of Follow-On Investments as permitted by this condition will be considered a Co-Investment Transaction for all purposes and subject to the other conditions set forth in the application.

9. The Independent Directors of each Regulated Fund will be provided quarterly for review all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Co-Investment Affiliates that the Regulated Fund considered but declined to participate in, so that the Independent Directors may determine whether all investments made during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the conditions of the Order. In addition, the Independent Directors will consider at least annually the continued appropriateness for the Regulated Fund of participating in new and existing Co-Investment Transactions.

10. Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these conditions were approved by the Required Majority under section 57(f).

11. No Independent Director will also be a director, general partner, managing member or principal, or otherwise an ''affiliated person'' (as defined in the Act), of any of the Private Funds.

12. The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Adviser under its respective investment advisory agreements with the Co-Investment Affiliates, be shared by the Co-Investment Affiliates in proportion to the relative amounts of the securities held or being acquired or disposed of, as the case may be.

13. Any transaction fee (including break-up or commitment fees but excluding broker's fees contemplated by section 17(e) or 57(k), as applicable) received in connection with a Co-Investment Transaction will be distributed to the participating Co-Investment Affiliates on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by the Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by the Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1), and the account will earn a competitive rate of interest that will also be divided pro rata among the participating Co-Investment Affiliates based on the amounts they invest in such Co-Investment Transaction. None of the Adviser, the Co-Investment Affiliates nor any affiliated person of the Co-Investment Affiliates will receive additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction (other than (a) in the case of the participating Co-Investment Affiliates, the pro rata transaction fees described above and fees or other compensation described in condition 2(c)(iii)(C), and (b) in the case of the Adviser, investment advisory fees paid in accordance with the respective agreements between the Adviser and the Co-Investment Affiliates).

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71749; File No. SR–NYSEMKT–2014–20]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Expanding the Short-Term Option Series Program

March 19, 2014.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 13, 2014 NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes several amendments to expand the short-term option series (''STOS'') program. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes several amendments to expand the STOS Program (the ''Proposal'') to harmonize the Exchange's rules with recently approved changes to the rules governing short-term options series programs of other options exchanges. The proposed changes are discussed separately below in order to align them with the recently approved filings by the other exchanges. The Exchange believes that this Proposal would enable the Exchange to compete equally and fairly with other options exchanges in satisfying high market demand for weekly options and continuing strong customer demand to use STOS to execute hedging and trading strategies, particularly in the current fast and volatile investing environment.

Part I of the Proposal

Under Part I of the Proposal, the Exchange proposes to make two changes to the STOS Program for non-index options, including equity, currency, and exchange-traded funds (''ETFs''), as follows: (i) to allow the Exchange to list options in the STOS Program on each of the next five Fridays that are business days and are not Fridays in which monthly options series or quarterly options series expire (''Short Term

Option Expiration Dates'') at one time;[4] and (ii) to state that additional series of STOS may be listed up to, and including on, the day of expiration.[5] These proposed rule changes are substantially identical to a recently approved filing by the Chicago Board of Options (''CBOE'') and a copycat filing for immediate effectiveness by the International Securities Exchange (''ISE''), except that, unlike the CBOE and ISE filings, the Exchange does not propose to amend rules relating to its STOS Program for index options but only those rules relating to non-index options.[6]

Under current Rule 903(h), a Short-Term Option Series is a series of an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Thursday or Friday that is a business day and that expires at the close of business on the next Friday that is a business day.[7] If a Thursday or Friday is not a business day, the series may be opened on the first business day immediately prior to that Thursday or Friday; and, if a Friday is not a business day, the series shall expire on the first business day immediately prior to that Friday.[8] The Exchange, however, may only list STOS ''on each of the next five consecutive Fridays that are business days'' and no STOS may expire in the same week in which a monthly or quarterly option series in the same class expires.[9] Thus, because a Friday expiration may coincide with an existing expiration of a monthly or quarterly series of an option in the same class as the STOS option series, the current requirement that the Fridays be consecutive may mean that the Exchange cannot open five STOS expiration dates because of existing monthly or quarterly expirations.

The Exchange proposes to amend Rule 903(h) to remove the requirement that the five expiration dates be on consecutive Fridays, and instead provide that the Exchange would have the ability to list a total of five STOS expirations at the same time, provided that the expirations are on ''each of the next five Fridays'' that do not include a monthly or quarterly options expiration date.[10] As proposed, the Exchange would list each of the five STOS as close to the STOS opening date as possible so that the next five STOS may be listed at one time, not including the monthly or quarterly options. For example, if a class of options has five STOS listed with expiration dates in July, the other two listed expiration dates may not be in December. The Exchange believes that allowing otherwise would undermine the purpose of the STOS Program. For example, consider a scenario in which a quarterly option expires week 1 and a monthly option expires week 4 from now. As proposed, the Exchange could list a new STOS with the following expiration: week 1 quarterly option, week 2 STOS option, week 3 STOS option, week 4 monthly option, week 5 STOS option, week 6 STOS option, and week 7 STOS option.[11] As another example, if a quarterly option expires week 3 and a monthly option expires week 6, the following expirations would be allowed: Week 1 STOS option, week 2 STOS option, week 3 quarterly option, week 4 STOS option, week 5 STOS option, week 6 monthly option, week 7 STOS option.

The second change that the Exchange proposes to make under Part I of the Proposal is to codify an existing practice by adding language to Commentary .10(c) to Rule 903 to state that additional STOS may be added up to, and including on, the expiration date of the series. As discussed under Part II of the Proposal below, the Exchange rules specify the number of initial and additional series that the Exchange may open for each option class that participates in the STOS Program.[12] While the Exchange rules are silent on when series may be added, in practice, the Exchange, along with the other exchanges, list additional series up to, and on, the expiration day.[13] Consistent with the actions taken by other options exchanges, the Exchange believes that codifying this practice will clarify authority that is not currently explicitly stated in its rules to add series up until the day of expiration.[14] Given the short lifespan of STOS, the Exchange believes that the ability to list new series of options intraday is appropriate.[15]

As noted above, Part I of this Proposal is consistent with the recently approved filing and current practices of other options exchanges, except that the Exchange's Proposal is limited to amending rules relating to its STOS Program for non-index options and does not include rules relating to index options.[16] The Exchange believes that this Proposal would enable the Exchange to compete equally and fairly with other options exchanges in satisfying high market demand for weekly options and continuing strong customer demand to use STOS to execute hedging and trading strategies, particularly in the current fast and volatile investing environment.

Part II of the Proposal

Part II of the Proposal seeks to further expand the STOS Program by making additional amendments to Commentary .10 to Rule 903. Specifically, the Exchange is proposing to: (1) Expand the number of classes on which STOS may be opened in accordance with its STOS Program from 30 to 50; (2) modify the initial listing provision to allow the Exchange to open up to 30 STOS for each expiration date in a STOS class; (3) expand the strike price range limitations for STOS; and (4) allow the Exchange to list STOSs at a strike price interval of $2.50 or greater where the strike price is above $150. These proposed changes are substantially identical to a recently approved filing by NASDAQ OMX PHLX, LLC (''PHLX'') and copycat filings for immediate effectiveness by the CBOE and ISE, unless otherwise noted herein.[17]

Current Commentary .10(a) to Rule 903 states that after an equity option

[4] *See* proposed Rule 903(h).

[5] *See* proposed Commentary .10(c) to Rule 903(h).

[6] *See* Securities and Exchange Act Release No. 71005 (December 6, 2013), 78 FR 75395 (December 11, 2013) (SR–CBOE–2013–096) (approval order); Securities and Exchange Act Release No. 71033 (December 11, 2013), 78 FR 76375 (December 17, 2013) (SR–ISE–2013–68). For STOS Program Rules regarding index options, *see* Rule 903C; Rule 900C(b)(27).

[7] *See* Rule 903(h).

[8] *Id.*

[9] *Id.*

[10] *See* proposed Rule 903(h).

[11] The Proposal would not allow, for example, for nothing to be listed week 7 but in week 8, a STOS option.

[12] *See* Commentary .10(b) and (c) to Rule 903.

[13] The Exchange notes that the Options Clearing Corporation (''OCC'') has the ability to accommodate series in the STOS Program intraday.

[14] *See supra* n.6.

[15] The Exchange is also proposing to add language to Commentary .10(c) stating that this provision is designed to eliminate any confusion about when additional series may be added in the STOS Program in comparison to other Exchange listing programs. Specifically, the Exchange proposes to add language stating that ''Notwithstanding any other provisions in this Rule 903, Short Term Option Series may be added up to and including on the Short Term Expiration Date for that option series.''

[16] *See supra* n.6.

[17] *See* Securities Exchange Act Release No. 70682 (October 15, 2013), 78 FR 62809 (October 22, 2013) (SR–PHLX–2013–101) (notice of filing); Securities Exchange Act Release No. 71004 (December 6, 2013), 78 FR 75437 (December 11, 2013) (approval order); Securities and Exchange Act Release No. 71079 (December 16, 2013), 78 FR 77188 (December 20, 2013) (SR–CBOE–2013–121); Securities and Exchange Act Release No. 71034 (December 11, 2013), 78 FR 76363 (December 17, 2013) (SR–ISE–2013–69). Consistent with these filings, the Exchange is only proposing to amend the STOS Program for equity options, but notes that the number of classes that may participate in the STOS Program is aggregated between equity options and index options and is not apportioned between equity options and index options. Unlike the CBOE filing, however, the Exchange does not propose any conforming changes to rules relating its STOS Program for index options.

class has been approved for listing and trading on the Exchange, the Exchange may open no more than thirty option classes.[18] In addition to the thirty-option class limitation, there is also a limitation that no more than twenty initial series may be opened for trading; provided, however, that the Exchange may open up to ten additional series when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened.[19] The same number of strike prices must be opened above and below the value of the underlying security at about the time that the STOS are initially opened for trading on the Exchange.[20] Furthermore, under the current rule, the strike price of each STOS currently has to be fixed with approximately the same number of strike prices being opened above and below the value of the underlying security at about the time that the STOS are initially opened for trading on the Exchange, and with strike prices being within thirty percent (30%) above or below the closing price of the underlying security from the preceding day.[21]

In terms of strike price intervals, the STOS Program currently allows the interval between strike prices on STOS to be (i) $0.50 or greater where the strike prices is less than $75, and $1 or greater where the strike price is between $75 and $150 for all classes that participate in the STOS Program.[22] In addition, during a market move such that no series are at least 10% above or below the current price of the underlying security and all existing series have open interest, the Exchange may also open additional series in excess of the thirty-strike limitation that are between 10% and 30% of the price of the underlying security.[23] Finally, in the event that the underlying security has moved such that there are no series that are at least 10% above or below the current prices of the underlying security, the Exchange will delist any series with no open interest so as to list series that are at least 10% but not more than 30% above or below the current price of the underlying security.[24]

The Exchange proposes to expand the STOS Program as the Exchange believes an expansion will benefit the marketplace while aligning the Exchange with currently proposed expansions by other options exchanges.[25]

First, the Exchange is proposing to increase the number of STOS classes that may be opened after an option class has been approved for listing and trading on the Exchange. The Exchange proposes to amend Commentary .10(a) to Rule 903 so that the Exchange may select up to fifty currently listed option classes on which STOS may be opened. The Exchange also proposes to amend Commentary .10(b) to Rule 903 so that the Exchange may open up to 30 series of STOS for each expiration date in that class.

Second, the Exchange proposes to amend Commentary .10(b) and (c) to Rule 903 to indicate that any initial or additional strike prices listed by the Exchange shall be reasonably close to the price of the underlying equity security and within the following parameters: (i) If the price of the underlying security is less than or equal to $20, strike prices shall be not more than one hundred percent (100%) above or below the price of the underlying security; and (ii) if the price of the underlying security is greater than $20, strike prices shall be not more than fifty percent (50%) above or below the price of the underlying security.[26]

The Exchange is also proposing to amend Commentary .10(c) to Rule 903 to indicate that the Exchange may open additional strike prices of STOS that are no more than 50% above or below the current value of the underlying security (if the price is greater than $20); provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market-Makers trading for their own account shall not be considered when determining customer interest under this provision. The Exchange notes that this aspect of Part II of the Proposal differs from the recently amended rules of other exchanges, which permit those exchanges to open additional strike prices for STOS that are more than 50% above or below the current price of the underlying security if the price of the underlying security is greater than $20.00.[27] However, the Exchange believes that its proposed amendment is consistent with the process for adding new series of options found in subsection 3(g)(i) of the Options Listing Procedures Plan (''OLPP''), which is codified in Rule 903A. Specifically, Rule 903A(b)(i) provides that an option series price has to be reasonably close to the price of the underlying security and must not exceed a maximum of 50% or 100%, depending on the price, from the underlying security. The rule further provides that if the price of the underlying security is greater than $20, the Exchange shall not list new option series with an exercise price more than 50% above or below the price of the underlying security. The Exchange believes that its proposed amendment to Commentary .10(c) to Rule 903 is aligned with OLPP procedures, as codified in Rule 903A(b)(i). Moreover, the Exchange believes that its proposed amendment is a reasonable enhancement to the STOS Program in that it harmonizes the Program internally by adopting consistent parameters for opening STOS and listing additional strike prices.

Next, the Exchange proposes to simplify the delisting language in Commentary .10(c) to Rule 903 by removing the current range methodology that states, in part, that the Exchange will delist certain series ''so as to list series that are at least 10% but not more than 30% above or below the current price of the underlying security.'' [28] As proposed, if the underlying security has moved such that there are no series that are at least 10% above or below the current price of the underlying security, the Exchange will continue to delist any series with no open interest in both the call and the put series having a: (i) Strike higher than the highest price with open interest in the put and/or call series for a given expiration week; and (ii) strike lower than the lowest strike price with open interest in the put and/or the call series for a given expiration week. The Exchange notes that new series added after delisting will not be constrained by the prior range methodology. The Exchange believes that, like the other aspects of this Proposal, this proposed amendment will add clarity and certainty to the STOS process on the Exchange.

Finally, the Exchange proposes to add $2.50 strike price intervals to the STOS

[18] *See* Rule 903(a). The increase in the number of option issues that could be opened pursuant to the STOS Program went into effect in August 2013. *See* Securities Exchange Act Release No. 34–70169 (August 13, 2013) (SR–NYSEMKT–2013–68), 78 FR 50475 (August 19, 2013).

[19] *See* Commentary .10(a), (b) and (c) to Rule 903.

[20] *Id.*

[21] *Id.*

[22] *See* Commentary .10(d) to Rule 903.

[23] *See* Commentary .10(c) to Rule 903.

[24] *See id.*

[25] *See supra* n.17.

[26] The price of the underlying security is calculated in accordance with Rule 903A.

[27] *See* PHLX Commentary .11(d) of Rule 1012; CBOE 5.5(d)(4); ISE Supplementary Material .02(d) to Rule 504. *See also* PHLX Commentary .10(a) of Rule 1012; CBOE Rule 5.5A; ISE Rule 504A(b)(i).

[28] *See* Commentary .10(c) to Rule 903.

Program. Specifically, the Exchange proposes to amend Commentary .10(d) to Rule 903 to indicate that the interval between strike prices on STOS may be $2.50 or greater where the strike price is above $150. This proposed change complements the current STOS strike price intervals of $0.50 or greater where the strike price is less than $75 (or for STOS classes that trade in one dollar strike intervals), and $1 or greater where the strike price is between $75 and $150 for all classes that participate in the STOS Program. This proposed change would align the Exchange with other options exchanges participating in the STOS Program, while permitting the listing of an additional strike interval for higher priced underlying securities that complements the current intervals.[29]

With regard to the impact of this Proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with the proposed expansion of the STOS Program. While the expansion of the STOS Program is expected to generate additional quote traffic, the Exchange believes that this increased traffic will be manageable. The Exchange also notes that any series added under this expansion would be subject to quote mitigation.[30] Although the number of classes participating in the STOS Program would increase, that increase would be limited, as described above, and consistent with existing, similar programs on other exchanges.[31] Further, the Exchange does not believe that the Proposal will result in a material proliferation of additional series because it is limited to a fixed number of classes.

As noted above, the STOS Program has been very well-received by market participants, in particular by retail investors. There is continuing strong customer demand for having the ability to execute hedging and trading strategies via STOS, particularly in the current fast and volatile multi-faceted trading and investing environment that extends across numerous markets and platforms.[32] The Exchange has been requested by traders and other market participants to expand the STOS Program to allow additional STOS offerings and increased efficiency.[33]

Finally, the Exchange notes that other options exchanges have rules similar to this Proposal and other exchanges will continue to adopt similar rules, which continued expansion of the STOS Program the Exchange believes will serve to promote competition amongst the exchanges. The Exchange believes that the current Proposal will permit the Exchange to meet increased customer demand and provide market participants with the ability to hedge in a greater number of option classes and series.

2. Statutory Basis

The Exchange believes that the Proposal is consistent with Section 6(b) of the Act,[34] in general, and furthers the objectives of Section 6(b)(5),[35] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, 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) [36] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that all of the elements of the Proposal, including allowing for the listing of STOS on each of the next five Fridays that are business days and are not Fridays in which monthly options series or quarterly options series expire at one time, expanding the classes and additional series that can be opened in the STOS Program, simplifying the delisting process, and allowing $2.50 strike price intervals, will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment and hedging decisions in greater number of securities, thus allowing them to better manage their risk exposure. The Exchange believes this Proposal to expand the STOS Program would make the Program more effective, would harmonize the provisions with the OLPP, and would create more clarity in the Exchange's rules to the benefit of investors, market participants and the market in general. For the foregoing reasons, the Exchange also believes that the proposed rule changes are equitable and not unfairly discriminatory as the benefits from the expansion of the STOS Program will be available to all market participants.

With regard to the impact of this Proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with the proposed expansion of the STOS Program. While the expansion of the STOS Program is expected to generate additional quote traffic, the Exchange believes that this increased traffic will be manageable. The Exchange also notes that any series added under this expansion would be subject to quote mitigation.[37] Although the number of classes participating in the STOS Program would increase, that increase would be limited, as described above, and consistent with existing, similar programs on other exchanges.[38] Further, the Exchange does not believe that the Proposal will result in a material proliferation of additional series because it is limited to a fixed number of classes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the Proposal will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes the Proposal is pro-competitive and will allow the Exchange to compete more effectively with other options exchanges that have already adopted changes to their STOS Programs that are substantially identical to the changes proposed by this filing.[39] The Exchange believes that the Proposal will result in additional investment options and opportunities to achieve the investment objectives of market participants seeking efficient trading and hedging vehicles, to the benefit of investors, market participants, and the marketplace in general.

[29] *See supra* n.17.

[30] *See* Commentary .03 to Rule 6.86.

[31] *See supra* nn.6, 17.

[32] These include, without limitation, options, equities, futures, derivatives, indexes, ETFs, exchange traded notes, currencies, and over the counter instruments.

[33] In order that the Exchange not exceed the current thirty option class and twenty initial option series restriction, the Exchange has on occasion had to turn away STOS customers (traders and investors) because it could not list, or had to delist, STOS or could not open adequate STOS series because of restrictions in the STOS Program. This has negatively impacted investors and traders, particularly retail investors, who have continued to request that the Exchange add, or not remove, STOS classes, or have requested that the Exchange expand the STOS Program so that additional STOS classes and series could be opened that would allow the market participants to execute trading and hedging strategies.

[34] 15 U.S.C. 78f(b).

[35] 15 U.S.C. 78f(b)(5).

[36] *Id.*

[37] *See* Commentary .03 to Rule 6.86.

[38] *See supra* nn.6, 17.

[39] *See supra* nn.6, 17.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[40] and Rule 19b–4(f)(6) thereunder.[41]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of this requirement will allow the Exchange to compete with other options exchanges that have expanded their STOS Programs without putting the Exchange at a competitive disadvantage. The Exchange also stated that the proposal would help eliminate investor confusion and promote competition among the options exchanges. For these reasons, the Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest; and will allow the Exchange to remain competitive with other exchanges. Therefore, the Commission designates the proposed rule change to be operative upon filing.[42]

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–NYSEMKT–2014–20 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–NYSEMKT–2014–20.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2014–20 and should be submitted on or before April 15, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–06462 Filed 3–24–14; 8:45 am]

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[40] 15 U.S.C. 78s(b)(3)(A).

[41] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[42] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[43] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71745; File No. SR–DTC–2013–11]

Self-Regulatory Organizations; Depository Trust Company; Notice of Filing Amendment Nos. 1 and 2 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Specify Procedures Available to Issuers of Securities Deposited at DTC for Book Entry Services When DTC Imposes or Intends To Impose Restrictions on the Further Deposit and/or Book Entry Transfer of Those Securities

March 19, 2014.

On December 5, 2013, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–DTC–2013–11 (''Proposed Rules'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder.[2] The Proposed Rules were published in the **Federal Register** on December 24, 2013.[3] The Commission received nine comments from seven commenters to the Proposed Rules and two letters from DTC responding to those comments.[4] On February 10, 2014, DTC filed Amendment No. 1 to the Proposed Rules. On March 10, 2014,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Release No. 34–71132 (Dec. 18, 2013); 78 FR 77755 (Dec. 24, 2013).

[4] *See* Letters to Elizabeth M. Murphy, Secretary, Commission from: Suzanne H. Shatto dated December 20, 2013 (''Shatto Letter''); Simon Kogan dated December 22, 2013 (''Kogan Letter''); DTCC BigBake dated December 27, 2013 (''DTCC BigBake Letter I'') and March 14, 2014 (''DTCC BigBake Letter II''); Brenda Hamilton, Hamilton & Associates Law Group, PA (''Hamilton Letter''); Charles V. Rossi, Chairman, STA Board Advisory Committee, Securities Transfer Association dated January 14, 2014 (''STA Letter''); Louis A Brillemen, Louise A. Brilleman, P.C. dated January 14, 2014 (''Brilleman Letter''); Gary Emmanuel and Harvey Kesner, Sichenzia Ross Friedman Ference LLP dated January 14, 2014 (''Sichenzia Letter I'') and February 24, 2014 (''Sichenzia Letter II''); and Isaac Montal, Managing Director and Deputy General Counsel, DTCC dated February 10, 2014 (''DTC Letter I'') and March 3, 2014 (''DTC Letter II'').

DTC filed Amendment No. 2 to the Proposed Rules.

The Commission is publishing this notice and order to solicit comments on Amendment Nos. 1 and 2 from interested persons and to institute proceedings under Section 19(b)(2)(B) of the Exchange Act [5] to determine whether to approve or disapprove the Proposed Rules. The institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved, nor does it mean that the Commission will ultimately disapprove the Proposed Rules. Rather, the Commission seeks and encourages interested persons to provide additional comment on the Proposed Rules to inform the Commission's analysis of whether to approve or disapprove the Proposed Rules.

I. Background

The Proposed Rules specify procedures available to issuers of securities deposited at DTC when DTC blocks or intends to block the deposit of additional securities of a particular issue (''Deposit Chill'') [6] or prevents or intends to prevent deposits and restrict book-entry and related depository services of a particular issue (''Global Lock'').

A. International Power

DTC filed the Proposed Rules in response to the Commission's opinion in *In the Matter of International Power Group, Ltd.* (''International Power'').[7] In International Power, the Commission held that issuers were entitled to ''fair procedures'' under Section 17A(b)(3)(H) when a clearing agency restricts or denies them access to services.[8] In addition, the Commission stated that it believes ''DTC should adopt procedures that accord with the fairness requirements of Section 17A(b)(3)(H), which may be applied uniformly in any future such issuer cases.'' [9] Those procedures must also comply with Section 17A(b)(5)(B) of the Exchange Act, which requires clearing agencies when prohibiting or limiting a person's access to services, to (1) notify such person of the specific grounds for the prohibition or limitation, (2) give the person an opportunity to be heard upon the specific grounds for the prohibition or limitation, and (3) keep a record.[10]

However, the Commission also acknowledged a clearing agency's need to act to avert ''imminent harm.'' [11] The Commission stated a clearing agency may justifiably impose a suspension of services in advance of providing the issuer with notice and an opportunity to be heard.[12] In such circumstances, a clearing agency's procedures ''should balance the identifiable need for emergency action with the issuer's right to fair procedures'' and any suspension could not be maintained ''indefinitely without providing expedited fair process to the affected issuer.'' [13]

B. DTC's Role Under Section 17A of the Exchange Act

DTC is the nation's central securities depository, registered as a clearing agency under Section 17A of the Exchange Act.[14] DTC performs services and maintains securities accounts for its participants, primarily banks and broker dealers (''Participants'').[15] Participants may present a security [16] to be made eligible for DTC's depository and book-entry services. If DTC accepts the security as eligible for those services and the security is deposited with DTC for credit to the securities account of a Participant, it becomes an ''Eligible Security.'' [17] Thereafter, other Participants may deposit that Eligible Security into their respective DTC accounts. Once the Eligible Security is credited to the account of one or more Participants, interests in that Eligible Security may be transferred among Participants by book-entry in accordance with the DTC Rules and Procedures.

As provided in the DTC Rules and Procedures, DTC processes the transfer of interests in Eligible Securities among DTC Participants by credits and debits to Participant accounts in accordance with the instructions of delivering and receiving Participants who are parties to the transaction. DTC Participants agree to be bound by DTC's Rules and Procedures as a condition of membership.

To facilitate book-entry transfer and other services that DTC provides for its Participants with respect to Deposited Securities,[18] Eligible Securities are registered on the books of the issuer (typically, in a register maintained by a transfer agent) in DTC's nominee name, Cede & Co. DTC maintains Eligible Securities of an issue in fungible bulk so that each Participant with an interest in the security has a pro rata interest in DTC's entire inventory of that issue, but none of the securities on deposit is identifiable to or owned by any particular Participant.[19]

DTC's deposit and book-entry transfer services facilitate the operation of the nation's securities markets. By serving as registered holder of trillions of dollars of securities, DTC processes the enormous volume of daily securities transactions by the book-entry movement without the need to transfer physical certificates.

C. DTC Eligibility Standards

DTC's Rules and Procedures authorize DTC to determine whether to accept a security as an Eligible Security and when an Eligible Security will cease to be such.[20] They also provide that DTC ''may limit certain services to particular

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[5] 15 U.S.C. 78s(b)(2)(B).

[6] Securities subject to a Deposit Chill remain eligible for book-entry transfer at DTC.

[7] *Int'l Power Group, Ltd.,* Securities Exchange Act Rel. No. 66611 (Mar. 15, 2012), 2012 SEC LEXIS 844.

[8] *Int'l Power,* 2012 SEC LEXIS 844, at *16. The Commission also held that the Commission has jurisdiction under Section 19(f) of the Exchange Act to review an issuer's appeal of a suspension or limitation on access to a clearing agency's services. The Commission remanded the case to DTC to provide fair procedures.

[9] *Int'l Power,* 2012 SEC LEXIS 844, at *32.

[10] *Int'l Power,* 2012 SEC LEXIS 844, at *24.

[11] *Int'l Power,* 2012 SEC LEXIS 844, at *29.

[12] *Int'l Power,* 2012 SEC LEXIS 844, at *29.

[13] *Int'l Power,* 2012 SEC LEXIS 844, at *29.

[14] *See* Securities Exchange Act Release No. 20221 (Sept. 23, 1983), 48 FR 45167 (Oct. 3, 1983).

[15] *See* 15 U.S.C. 78c(a)(24).

[16] ''Security'' is defined in DTC's rules as follows: The term ''Security'' has the meaning given to the term ''financial asset'' in Section 8–102 of the [Uniform Commercial Code of New York]. Any item credited to an Account (by the act of being credited to the Account) shall be deemed a Security under these Rules and shall be treated as a financial asset under Article 8 of the [Uniform Commercial Code of New York]. A Security may be an Eligible Security, a Deposited Security, a Pledged Security, a Segregated Security or an MMI Security, or some or all of them collectively, as the context may require. The term ''Security'' shall not include Preferred Stock. *See* DTC Rule 1.

[17] Eligible Security is defined in DTC's rules as ''a Security accepted by the Corporation, in its sole discretion, as an Eligible Security. The Corporation shall accept a Security as an Eligible Security only (a) upon a determination by the Corporation that it has the operational capability and can obtain information regarding the Security necessary to permit it to provide its services to Participants and Pledgees when such Security is Deposited and (b) upon such inquiry, or based upon such criteria, as the Corporation may, in its sole discretion, determine from time to time. The timing of additions of such issues shall be on a nondiscriminatory basis consistent with the Corporation's objective to provide the maximum practical degree of service in facilitating the prompt and orderly settlement of Securities transactions.'' *See* DTC Rule 1 and DTC Rule 5, Section 1.

[18] Deposited Security is defined in DTC's rules as ''an Eligible Security credited to the Account of a Participant by Deposit or Delivery. A Deposited Security shall cease to be such if it becomes a Pledged Security or is Withdrawn.'' *See* DTC Rule 1.

[19] *See* Securities Exchange Act Release No. 19678 (Apr. 15, 1983), 48 FR 17603, 17605, n.5 (Apr. 25, 1983) (describing fungible bulk); *see also* N.Y. Uniform Commercial Code, § 8–503, Off. Cmt 1 (''. . . all entitlement holders have a pro rata interest in whatever positions in that financial asset the [financial] intermediary holds'').

[20] *See* DTC Rule 5.

issues of Eligible Securities.'' [21] The standards for determining whether a security is an Eligible Security are as follows: [22]

> Generally, the issues that may be made eligible for DTC's book-entry delivery, settlement and depository services are those that have been issued in a transaction that: (i) Has been registered with the Commission pursuant to the Securities Act of 1933 (''Securities Act''); (ii) was exempt from registration pursuant to a Securities Act exemption that does not involve (or, at the time of the request for eligibility no longer involves) transfer or ownership restrictions; or (iii) permits resale of the securities pursuant to Rule 144A or Regulation S and in all cases such securities otherwise meet DTC's eligibility criteria.

Thus, an essential element of DTC eligibility is that the securities are ''freely tradeable'' or, if restricted by Rule 144A [23] or Regulation S under the Securities Act, are processed through a separate program in which Participants acknowledge and agree to comply with the applicable restrictions.

In determining whether deposited securities satisfy DTC's eligibility requirements, DTC may require an issuer to provide an opinion from outside counsel in order ''to substantiate the legal basis for eligibility.'' [24] DTC also reserves the right to require an opinion of counsel in support of eligibility requirements ''to protect DTC and its Participants from risk.'' [25]

II. Description of the Proposed Rules

A. Proposed Rule 22(A): Deposit Chills

1. Scope of Proposed Rule 22(A)

Proposed Rule 22(A) sets forth procedures available to issuers of Eligible Securities where DTC detects unusually large volumes of deposits of a low priced or thinly traded Eligible Security and, as a result, determines to impose or intends to impose a Deposit Chill.[26] The procedures will also apply if DTC imposes or intends to impose a Deposit Chill pursuant to its obligations under the Securities Act of 1933 (''Securities Act''), the Bank Secrecy Act (''BSA'') or any rules, regulations, or guidance promulgated under the BSA, including rules or regulations that the Office of Foreign Asset Control promulgates.[27]

However, Proposed Rule 22(A) will not apply when DTC ''impose[s] operational restrictions on deposits or other services in connection with ordinary course of business processing of Eligible Securities.'' [28] One example of ''ordinary course of business processing'' is the processing of corporate actions, including name changes and stock splits. It will also not apply to other restrictions in DTC's Procedures [29] that do not constitute a Deposit Chill for purposes of Proposed Rule 22(A).

2. Deposit Chill Notice

DTC will send notice of the Deposit Chill (''Deposit Chill Notice'') to an issuer:

- No later than twenty Business Days [30] prior to the imposition of the Deposit Chill or;
- No later than three Business Days after imposition of the Deposit Chill in the event DTC must first impose the Deposit Chill:
  - ''in order to prevent imminent harm, injury or other such consequences to [DTC] or its Participants;'' or
  - if DTC ''reasonably determines that such action is necessary to protect the prompt and accurate clearance and settlement of securities transactions through [DTC].'' [31]

The Deposit Chill Notice will inform the issuer of the reasons for DTC's actions, including the legal authority upon which DTC relies to impose the Deposit Chill.[32] It will also provide the date the Deposit Chill was imposed or the date it will be imposed, should the issuer fail to respond to the Deposit Chill Notice.[33]

3. Deposit Chill Response

If the issuer elects to contest the Deposit Chill, it may submit a response (''Deposit Chill Response'') in the form and containing the substance provided in the Deposit Chill Notice.[34] If the issuer demonstrates to DTC's ''reasonable satisfaction'' that the issue complies with DTC's eligibility requirements and the applicable Procedures,[35] the Deposit Chill will be lifted or will not be imposed. DTC must receive the Deposit Chill Response within twenty Business Days after the date of the Deposit Chill Notice. However, DTC may extend this deadline for up to an additional twenty Business Days if the issuer establishes ''good cause.'' [36]

The Deposit Chill Response must include a legal opinion (''Legal Opinion'') from ''an independent securities counsel retained by the issuer and reasonably acceptable'' to DTC.[37] The Legal Opinion must establish that the security at issue meets DTC's eligibility requirements by showing either that the securities (i) are not restricted securities under SEC Rule 144(a)(3),[38] or (ii) are exempt from any restrictions on transferability under the Securities Act.[39] The Legal Opinion must be satisfactory to DTC, but DTC will not ''unreasonably withhold its acceptance'' if the Legal Opinion ''includes the material contents of the Template.'' [40]

4. Request for Additional Information

Upon receiving the Deposit Chill Response, DTC may request additional information from the issuer (''Additional Information Request''). DTC will set a time frame for the issuer's response to the Additional Information Request (''Additional Information Response''), but in no case will it be less than ten Business Days from the date of the Additional Information Request.

5. Deposit Chill Decision

If an issuer submits a Deposit Chill Response, DTC will provide the issuer

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[21] *See* DTC Rule 6.

[22] *See* DTC's Operational Arrangements, Section I.A.2.

[23] 17 CFR 230.144A.

[24] The Operational Arrangements further specify that such counsel must be ''an experienced securities practitioner, licensed to practice law in the relevant jurisdiction and in good standing in any bar to which such practitioner is admitted. *See* DTC Operational Arrangements Section I.B.2. Such counsel must be engaged in an independent private practice (i.e., not in-house counsel) and may not have a beneficial ownership interest in the security for which the opinion is being provided or be an officer, director or employee of the Issuer.'' *See* DTC Operational Arrangements Section I.A.1.

[25] *Id.*

[26] *See* Proposed Rule 22(A)(1).

[27] Proposed Rule 22(A)(3)(b)(iii).

[28] Proposed Rule 22(A)((3)(b)(2).

[29] ''Procedures'' means the ''Procedures, service guides, and regulations of the Corporation adopted pursuant to Rule 27, as amended from time to time.'' *See* DTC Rule 1. In its filing with the Commission, DTC proposed to amend this definition to include ''operational arrangements.''

[30] ''Business Days'' means any day on which DTC is open for business. *See* DTC Rule 1.

[31] Proposed Rule 22(A)(2).

[32] Proposed Rule 22(A)(2)(a)(i).

[33] *Id.*

[34] Proposed Rule 22(A)(2)(a)(ii).

[35] *See* DTC Rule 5.

[36] Proposed Rule 22(A)(2)(a)(iv).

[37] Proposed Rule 22(A)(2)(a)(iii). In its filing with the Commission, DTC stated that in determining whether counsel is acceptable for this purpose ''DTC refers to the relevant provisions set forth in the Operational Arrangements.'' Those provisions provide that counsel must be ''an experienced securities practitioner, licensed to practice law in the relevant jurisdiction and in good standing in any bar to which such practitioner is admitted. Such counsel must be engaged in an independent private practice (i.e. not in-house counsel) and may not have a beneficial ownership interest in the security for which the opinion is being provided or be an officer, director or employee of the Issuer.'' See Operational Arrangements, Section I.A.1. A template legal opinion (''Template'') will be included with the Deposit Chill Notice.

[38] 17 CFR 230.144(a)(3).

[39] The eligibility requirements are set forth in DTC Rule 5 and Section 1 of DTC's Operational Arrangements.

[40] Proposed Rule 22(A)(2)(b).

with a written decision (''Deposit Chill Decision''). An officer of DTC who did not have a role in the decision to impose the Deposit Chill (''Officer'') will make the Deposit Chill Decision.[41]

Timing of Deposit Chill Decision

If a Deposit Chill was imposed prior to the issuance of a Deposit Chill Notice, the Deposit Chill Decision will be provided within ten Business Days after receipt of the Deposit Chill Response or the Additional Information Response, if applicable. If a Deposit Chill was not imposed prior to the issuance of a Deposit Chill Notice, the Deposit Chill Decision will be provided within twenty Business Days after receipt of the Deposit Chill Response or the Additional Information Response, if applicable.

Effect of Deposit Chill Decision

The Deposit Chill Decision will result in DTC either: (i) Not imposing or releasing a Deposit Chill; or (ii) imposing a Global Lock on the security. DTC will not impose a Deposit Chill or will release a Deposit Chill already in place ''if the Officer reasonably determines that the Deposit Chill Response has established that the securities subject thereof satisfy [DTC's] eligibility requirements'' particularly that they satisfy DTC's eligibility requirements as set forth in Rule 5 and Section 1 of DTC Operational Arrangements.

DTC will intend to impose a Global Lock if the Officer reasonably determines that the Deposit Chill Response does not satisfy the substantive requirements in the Deposit Chill Notice. DTC will also impose a Global Lock if the issuer does not submit a Deposit Chill Response within the applicable time period.

Prior to imposition of the Global Lock in this circumstance, an issuer has ten Business Days to submit a supplemental Deposit Chill Response (''Supplemental Deposit Chill Response'').[42] The issuer is limited in the Supplemental Deposit Chill Response to demonstrating that (1) it did submit the Deposit Chill Response or Additional Information Response, if applicable, within the required time frame, or (2) DTC made a clerical mistake or a mistake arising from an oversight or omission in reviewing the Deposit Chill Response [or Additional Information Response, if applicable].[43] If an issuer submits a Supplemental Deposit Chill Response, the Officer will provide the issuer with a written decision (''Supplemental Deposit Chill Response Decision'') within ten Business Days of its submission.

6. The Record

The record for purposes of any appeal to the Commission will be comprised of:

- The Deposit Chill Notice, the Deposit Chill Response, the Deposit Chill Decision, the Supplemental Deposit Chill Response, the Supplemental Deposit Chill Response Decision, the Additional Information Request, and the Additional Information Response;
- All documents submitted in connection with the items listed immediately above and;
- Any written communications created pursuant to Proposed Rule 22(A)(3)(b)(iv), as described below.[44]

7. Waiver of Right To Make Submission

If an issuer does not comply with any deadline set pursuant to Rule 22(A) or in a Deposit Chill Notice, it waives its right to make the submission unless DTC expressly waives or extends in writing the period for submission.[45]

8. Reservation of Authority

Once DTC has imposed a Deposit Chill, Proposed Rule 22(A) does not prevent it from lifting or modifying the Deposit Chill ''to prevent imminent harm, injury or other such consequences to [DTC] or its Participants or where [DTC] otherwise reasonably determines that such action is necessary to protect the prompt and accurate clearance and settlement of securities transactions through DTC.'' [46] In addition, for those same reasons, DTC may impose a Deposit Chill after providing an issuer with a Deposit Chill Notice or Additional Information Request but before it has received a Deposit Chill Response or Additional Information Response without waiting for the applicable deadline to arrive.[47] In such circumstances, after the Deposit Chill is imposed, the procedures in Proposed Rule 22(A)(2)(c) will apply. For example, DTC will issue the Deposit Chill Decision with ten Business Days after receiving the Deposit Chill Response or the Additional Information Response, if applicable.[48]

Proposed Rule 22(A) also does not prohibit DTC from communicating with an issuer, its transfer agent, or other authorized representative known to DTC in connection with a Deposit Chill.[49] As noted above, any such substantive communications will be in writing and part of the record for purposes of any appeal to the Commission.

9. Method of Delivery of Deposit Chill Notice

DTC will send the issuer any Deposit Chill Notice via overnight courier to the issuer's address in its regulatory filings where it is incorporated or otherwise organized. If DTC cannot locate the issuer with reasonable diligence, it will send it the issuer's designee for service of process or the Secretary of State or any state securities agency of the State where the issuer is incorporated or otherwise organized. If the issuer is not incorporated or otherwise organized in any state, DTC will send them to any similar agent of the jurisdiction where the issuer is incorporated or otherwise organized.

B. Proposed Rule 22(B)

1. Scope of Proposed Rule 22(B)

The procedures in Proposed Rule 22(B) apply to issuers of Eligible Securities where DTC imposes or intends to impose a Global Lock [50] in conjunction with either of the following:

- *Judicial Action or Administrative Proceeding:* DTC becomes aware that the Commission or other federal or state law enforcement or regulatory authority has commenced a judicial action or administrative proceeding (''Proceeding'') alleging that ''Defendants'' [51] sold Eligible Securities in violation of Section 5 of the Securities Act or other applicable law.[52]
- *Deposit Chill:* DTC imposes a Global Lock when an issuer does not satisfy the requirements of lifting or not imposing a Deposit Chill in Rule 22(A)(2)(c)(ii) and (iii).[53]

[41] ''Officer'' of DTC is defined as ''an Executive Chairman of the Board and a Chief Executive Officer, each of whom shall be elected by the Board of Directors from among its own number, a Chief Operating Officer, one or more Managing Directors, a Secretary, a Treasurer, a Comptroller and an Auditor, and may include one or more Assistant Secretaries and one or more Assistant Treasurers. The officers shall be elected by the Board at the first meeting of the Board after the annual meeting of the shareholders in each year. The Board may elect or appoint other officers (including, but not limited to, a Vice Chairman of the Board, a President and one or more Vice Presidents), agents and employees, who shall have such authority and perform such duties as may be prescribed by the Board. . . .'' *See* DTC By-Laws Section 3.1.

[42] Proposed Rule 22(A)(c)(iii).

[43] Proposed Rule 22(A)(c)(iii).

[44] Proposed Rule 22(A)(b)(3)(iv).

[45] Proposed Rule 22(A)(2)(a).

[46] Proposed Rule 22(A)(3)(b)(i)(A).

[47] Proposed Rule 22(A)(3)(b)(i)(B).

[48] Proposed Rule 22(A)(3)(c).

[49] Proposed Rule 22(A)(3)(b)(iv).

[50] Proposed Rule 22(B)(1).

[51] Proposed Rule 22(B) defines ''Defendants'' as a defendant, defendants, and other subjects of the action.

[52] Proposed Rule 22(B)(1)(a).

[53] Proposed Rule 22(B)(1)(b).

2. Global Lock Notice

DTC will send notice of the Global Lock (''Global Lock Notice'') to an issuer:

• No later than twenty Business Days prior to the imposition of the Global Lock [54] or;

• no later than three Business Days after imposition of the Global Lock in the event DTC must first impose the Global Lock:

○ ''in order to prevent imminent harm, injury or other such consequences to [DTC] or its Participants;'' or

○ if DTC ''reasonably determines that such action is necessary to protect the prompt and accurate clearance and settlement of securities transactions through [DTC].'' [55]

The Global Lock Notice will inform the issuer of the reasons for DTC's actions, including the legal authority upon which DTC relies.[56] It will also provide the date the Global Lock was imposed or the date it will be imposed should the issuer fail to respond to the Global Lock Notice.[57] With respect to the issuer's response, the Global Lock Notice will set forth the following: [58]

3. Global Lock Response

If the issuer elects to contest the Global Lock, it may submit a response (''Global Lock Response'') in the form and containing the substance provided in the Global Lock Notice. If the Global Lock Notice is based on a Proceeding as described in Proposed Rule 22(B)(1)(a), it will contain notice that a Global Lock will not be imposed, or, if already imposed, will be released if the issuer demonstrates either (1) that the Eligible Securities were not the intended subject of the Proceeding, or (2) that the Proceeding was withdrawn or dismissed on the merits with prejudice or otherwise resolved in a final, non-appealable judgment in favor of the Defendants.

DTC must receive the Global Lock Response with twenty Business Days after the date of the Global Lock Notice. However, DTC may extend this deadline for up to an additional twenty Business Days if the issuer establishes ''good cause.''

4. Global Lock Decision

If an issuer submits a Global Lock Response, DTC will provide the issuer with a written decision (''Global Lock Decision'').[59]

Timing of Global Lock Decision

If a Global Lock was imposed prior to the issuance of a Global Lock Notice, the Global Lock Decision will be provided within ten Business Days after receipt of the Global Lock Response. If a Global Lock was not imposed prior to the issuance of a Global Lock Notice, the Global Lock Decision will be provided within twenty Business Days after receipt of the Global Lock Response.

Effect of Global Lock Decision

The Global Lock Decision will result in DTC either: (i) Not imposing or releasing a Global Lock; or (ii) imposing or not releasing a Global Lock on the security. DTC will not impose a Global Lock, or will release a Global Lock already in place, if it reasonably determines that the Global Lock Response satisfies the requirements set forth in the Global Lock Notice.[60] If DTC reasonably determines that the Global Lock Response does not satisfy those requirements, it will impose or not release the Global Lock, as applicable.

5. Release of Global Lock Stemming From a Proceeding

Proposed Rule 22(B)(3) provides for the release of Global Locks imposed pursuant to a Proceeding as set forth in Proposed Rule 22(B)(1)(a). However, if the safe harbor under Securities Act Rule 144 is not available to the issuer pursuant to Securities Act Rule 144(i),[61] the issuer is not eligible for relief under this provision.[62] For those issuers, the Global Lock will remain in place until it complies with the requirements of Securities Act Rule 144(i)(2).[63]

For all other issuers, the length of the Global Lock will depend in the first instance on whether the issuer is subject to the reporting requirements of Sections 13(a) and 15(d) of the Exchange Act. If the issuer is subject to such requirements, the Global Lock will be lifted six months after the ''Disposition.'' [64] If the issuer is not subject to the reporting requirements, the Global Lock will be lifted one year after either the entry of a judicial order or judgment or, if the Commission brought an administrative proceeding, the Disposition.[65]

Under Section 3 of Proposed Rule 22(B), an issuer may be required to submit a Legal Opinion and/or other evidence or documentation as DTC may reasonably require.[66]

6. Release of a Global Lock Stemming From a Deposit Chill Under Proposed Rule 22(A)(2)(c)

Section 4 of Proposed Rule 22(B) provides for the release of Global Locks imposed when an issuer fails to satisfy the requirements for lifting a Deposit Chill in Sections 2(c)(ii) and (iii) of Proposed Rule 22(A). Like Section 3 of Proposed Rule 22(B), the length of the Global Lock will depend on whether the issuer is subject to the reporting requirements under Section 13 or Section 15(d) under the Exchange Act. If the issuer is such a reporting company, the Global Lock will be lifted six months after its imposition.[67] If the issuer is not such a reporting company, the Global Lock will be lifted one year after its imposition.[68] As in Section 3 of Proposed Rule 22(B), a Global Lock will remain in place for those issuers for which the safe harbor under Securities Act Rule 144 would be unavailable pursuant to Rule 144(i) until the issuer complies with the requirements of Securities Act Rule 144(i)(2).[69]

7. Record

The record for purposes of any appeal to the Commission consists of the Global Lock Notice, the Global Lock Response, and the Global Lock Decision.[70]

8. Waiver of Right To Make Submission

If an issuer does not comply with any deadline set pursuant to Rule 22(B) or in a Global Lock Notice, it waives its right to make the submission unless DTS expressly waives or extends in writing the period for submission.[71]

9. Reservation of Authority

Once DTC has imposed a Global Lock, Proposed Rule 22(B) does not prevent it from lifting or modifying the Global Lock ''to prevent imminent harm, injury or other such consequences to [DTC] or

[54] Proposed Rule 22(B)(2).

[55] Proposed Rule 22(B)(2).

[56] Proposed Rule 22(B)(2)(a)(i).

[57] *Id.*

[58] Also included with the Global Lock Notice will be a copy of Proposed Rule 22(B). *See* Proposed Rule 22(B)(2)(a)(iv).

[59] Proposed Rule 22(B)(c).

[60] Proposed Rule 22(B)(2)(c).

[61] *See* 17 CFR 230.144(i).

[62] Proposed Rule 22(B)(3).

[63] *Id.*

[64] Proposed Rule 22(B)(3)(b). Proposed Rule 22(b)(3)(a)(ii) defines ''disposition'' as ''a final order of the Commission pursuant to Rule 360(d)(2) or Rule 411(a) of the Commission's Rules of Practice that disposes of the claims against those Defendants allegedly responsible for the violations of Section 5 of the Securities Act relating to the Eligible Securities.

[65] Proposed Rule 22(B)(2)(a)(i) and (ii).

[66] Proposed Rule 22(B)(3)(c). As with a Legal Opinion regarding a Deposit Chill Notice, any Legal Opinion an issuer submits regarding a Global Local Notice must be in a form and substance satisfactory to DTC and be from an independent securities counsel reasonably acceptable to DTC. *Id.*

[67] Proposed Rule 22(B)(4).

[68] *Id.*

[69] *Id.*

[70] Proposed Rule 22(B)(2)(d).

[71] Proposed Rule 22(B)(5)(a).

its Participants or where [DTC] otherwise reasonably determines that such action is necessary to protect the prompt and accurate clearance and settlement of securities transactions through [DTC].'' [72] In addition, for those same reasons, DTC may impose a Global Lock after providing an issuer with a Global Lock Notice but before it has received a Global Lock Response before the applicable deadline.[73] In such circumstances, after the Global Lock is imposed, the procedures in Section 2(c) of Proposed Rule 22(B) will apply. For example, DTC will issue the Global Lock Decision with ten Business Days after receiving the Global Lock Response.[74]

Proposed Rule 22(B) also does not prohibit DTC from communicating with an issuer, its transfer agent of other authorized representative known to DTC in connection with a Global Lock.[75] As noted above, any such substantive communications will be in writing and part of the record for purposes of any appeal to the Commission.

In addition, nothing in Proposed Rule 22(B) displaces any legal or regulatory requirements that DTC is subject to under applicable law, rule or regulation.[76] If DTC imposes a Global Lock for reasons other than those described in Proposed Rule 22(B), it will, however, apply the procedures set forth in Proposed Rule 22(B).[77]

10. Method of Delivery of Global Lock Notice

DTC will send the issuer any Global Lock Notice via overnight courier to the issuer's address in its regulatory filings where it is incorporated or otherwise organized.[78] If DTC cannot locate the issuer with reasonable diligence, it will send them to the issuer's designee for service of process or the Secretary of State or any state securities agency of the State where the issuer is incorporated or otherwise organized.[79] If the issuer is not incorporated or otherwise organized in any state, DTC will send them to any similar agent of the jurisdiction where the issuer is incorporated or otherwise organized.[80]

III. Summary of Comments and DTC's Responses

The Commission received nine comment letters from seven commenters on the Proposed Rules. DTC submitted two letters responding to comments. The summary of comments and DTC's responses are organized into three categories: (i) Notice to issuers, (ii) opportunity to be heard, and (iii) fair procedures.[81]

A. Notice to Issuers

1. Comments Regarding Meaning of ''Imminent Harm''

One commenter believes that DTC's ability to impose a Deposit Chill or Global Lock ''to prevent imminent harm, injury or other such consequences to [DTC] or its Participants, or where [DTC] otherwise reasonably determines that such action is necessary to protect the prompt and accurate clearance and settlement of securities transactions through [DTC]'' is overly broad, ripe for abuse, and has the potential to render the advance notice procedure meaningless.[82]

Commenters also question what constitutes ''imminent harm'' and requests that DTC clarify the term.[83] One commenter believes DTC should be required to clearly outline the minimum showing of imminent harm that would be needed to justify the imposition of a restriction prior to providing the issuer with notice.[84] This commenter requests that DTC develop procedures for an expedited proceeding that should mirror FINRA Rule 9552.[85] One commenter does not believe that Section 17A authorizes DTC to restrict an issuer's access to its facilities without prior notice.[86]

One commenter does not believe that the Proposed Rules require DTC to articulate what the ''imminent harm'' is in the Deposit Chill Notice, but rather only provide notice of the restriction and the reasons for the restriction. The commenter recommends that DTC be required to articulate the potential risks and who faces those risks.[87]

DTC responds that it ''has provided meaningful standards to justify imposition of restrictions in those cases where prior notice is not feasible.'' [88] It cites to International Power where the Commission stated that DTC may impose restrictions prior to providing notice ''[i]f DTC believes that circumstances exist that justify imposing an suspension of services with respect to an issuer's securities in advance of being able to provide the issuer with notice and an opportunity to be heard on the suspension.'' The Commission further stated that DTC may act to avoid imminent harm, but it must then provide ''expedited fair process to the affected issuer.'' [89]

DTC explains that ''[w]hen its monitoring system detects that Participants may be in the process of currently and consistently depositing ineligible securities into the system, DTC may impose a Deposit Chill without prior notice to stop further deposits of such ineligible securities.'' [90] It also believes that Rule 22(A) provides issuers with expedited fair process. Based on its experience using the procedures in the Proposed Rule Change over the past months, DTC notes that in the ''majority of cases'' it has provided notice to issuers prior to imposing a Deposit Chill.[91]

With respect to Global Locks, DTC believes it is able to institute them as soon as possible once the Commission alleges that the proffered exemption and all other possible exemptions are not applicable.[92] As with Deposit Chills, over the past months DTC has provided notice to issuers prior to imposing a Global Lock in a majority of cases.[93]

2. Comments Regarding the Deposit Chill Notice

One commenter believes that in order for issuers to have the opportunity to fully understand and respond to the issues raised in the Deposit Chill Notice, DTC must provide in the Deposit Chill Notice the reasons for the Deposit Chill or Global Lock in light of DTC's Eligibility Requirements.[94] DTC responds that the Proposed Rule change requires the Deposit Chill Notice and the Global Lock Notice to contain the

[72] Proposed Rule 22(B)(5)(b)(i)(A).
[73] Proposed Rule 22(A)(5)(b)(i)(B).
[74] Proposed Rule 22(B)(5)(c).
[75] Proposed Rule 22(B)(5)(b)(iv).
[76] Proposed Rule 22(B)(5)(b)(iii).
[77] *Id.*
[78] Proposed Rule 22(B)((5)(c).
[79] *Id.*
[80] *Id.*

[81] Two commenters argued about that the scope of the Proposed Rules should be broader. Both of these commenters interpret Proposed Rule 22(A) to apply only when DTC imposes a Deposit Chill upon detecting ''unusually large volumes of deposits of a low priced or thinly traded Eligible Security.'' *See* STA Letter at 3–4; Sichenzia Letter I at 3. One of these commenters interprets Proposed Rule 22(B) to apply only when DTC becomes aware of a judicial or administrative proceeding or when an issuer has failed to meet the threshold for lifting a Deposit Chill. *See* Sichenzia Letter at 3. DTC responded that the Proposed Rules are broader than the commenters' interpretation. *See* DTC Letter I at 13–14 (citing Proposed Rule 22(A)(3)(b)(iii) and Proposed Rule 22(B)(5)(b)(iii)).

One commenter believes the Proposed Rules should apply to other persons using DTC's services, including transfer agents. *See* STA Letter at 7–8.

[82] *See* Sichenzia Letter I at 4.
[83] *See* Sichenzia Letter I at 4; Kogan Letter at 3.
[84] *See* Kogan Letter at 3.
[85] *See* Kogan Letter at 3.
[86] *See* Kogan Letter at 2.
[87] *See* Kogan Letter at 3.
[88] *See* DTC Letter I at 8.
[89] *Int'l Power,* 2012 SEC LEXIS 844, at *29.
[90] *See* DTC Letter I at 9.
[91] *See* DTC Letter I at 9.
[92] *See* DTC Letter I at 9.
[93] *See* DTC Letter I at 9.
[94] *See* STA Letter at 4.

reasons for the service restriction and provide the required form of response.[95]

One commenter believes that the named transfer agent of an issuer should also receive the Deposit Chill Notice and the Global Lock Notice. This commenter states that providing notice to the transfer agent would allow it to protect the interests of other registered shareholders of the issuer, as well as its own interests.[96] Another commenter does not believe that notice to a transfer agent is reasonably calculated to provide notice to the issuer, and instead suggests notice be given to the registered agent for service of process or the Secretary of State in the state of incorporation.[97]

One commenter also believes that DTC should give contemporaneous notice to the Commission. It believes this is necessary in order for the issuer to be able to seek a ''stay of the restriction.'' [98] DTC responds that it does not need to replicate in its rules the Commission's Rules of Practice.[99] Another commenter believes that DTC should be required to notify law enforcement if it notices ''a pattern by depositors.'' [100]

B. Opportunity To Be Heard

1. Comments Requesting an Opportunity for an In-Person Hearing and Internal Appeal

Three commenters believe that Section 17A of the Exchange Act requires DTC to provide affected issuers the opportunity to request a hearing to appeal the decision to institute a Deposit Chill or Global Lock within DTC.[101] Commenters cite to other SRO rules that afford affected parties the opportunity for a hearing in similar contexts, specifically, FINRA Rule 6490 and NASDAQ Rule 5815.[102]

Commenters also note that DTC Rule 22 permits issuers to contest any decision to deny their status as an Eligible Security by filing a request for a hearing. Such a hearing takes place before three members of a panel selected by the Chairman of the Board of the Depository Trust and Clearing Corporation, the parent company of DTC, from a pool of persons employed by or partners of Participants.[103] One commenter notes that in the event that an issuer is subject to a Deposit Chill or a Global Lock, the effect of that decision by DTC is the same as though it has been denied status as an Eligible Security. As a result, this commenter argues that issuers should be afforded a hearing, just as they are under Rule 22.[104]

Another commenter similarly believes issuers must be afforded a hearing like those provided under DTC Rule 22.[105] This commenter believes the Commission thought the issuer in International Power should have been given a hearing, although the commenter notes the Commission never held that DTC is required to provide a hearing.[106] The commenter points to the following statement from the Commission's opinion: ''DTC has not articulated an adequate rationale for providing a hearing to an issuer for whose securities DTC will provide no service, but not to an issuer whose securities are denied those clearance and settlement services that go to the heart of DTC's role as a clearing agency.'' [107] The commenter also believes that the Commission's references to FINRA Rule 9558, which requires a hearing, supports its position that the Commission intended for DTC to provide issuers a hearing.[108]

In response to these comments, DTC states that while Section 17A(b)(3)(H) requires DTC to provide persons with fair procedures when restricting services and Section 17A(b)(5)(B) requires that fair procedures include notice and an opportunity to be heard, nothing in 17A requires DTC to provide issuers with an in-person testimonial hearing.[109] DTC also provides that the Commission's opinion in International Power did not specify the procedures DTC should apply, but rather stated that DTC should ''adopt procedures that accord with the fairness requirements of Section 17A(b)(3)(H), which may be applied uniformly in any future such cases.'' [110] DTC also notes that even though the Commission refers to DTC Rule 22 in International Power, it did not state that DTC should apply those procedures when instituting Deposit Chills or Global Locks.[111]

With respect to the procedures in FINRA Rule 6490 and NASDAQ Rule 5815, DTC responds that it has a different role in the securities industry than FINRA and NASDAQ.[112] It notes that FINRA and NASDAQ have disciplinary and adjudicatory mandates ''to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade. . . .'' [113] DTC provides that it ''does not perform a policing function to root out fraudulent and manipulative conduct in violation of the securities laws.'' [114] DTC therefore concludes that ''[t]here is no basis to compare FINRA and NASDAQ's adjudicatory procedures arising from their policing functions with the fair procedures provided by DTC for compliance with its eligibility standards.'' [115]

With respect to commenter's assertions that the Commission's opinion in International Power, and specifically its references to FINRA Rule 9558, indicates a hearing is required, DTC notes the Commission's statement that ''DTC may design such processes in accordance with its own internal needs and circumstances.'' [116] In addition, DTC provides that the reference to FINRA Rule 9558 was regarding notice and expedited fair process where action is necessary to avoid imminent harm.[117]

2. Comments Regarding Due Process

One commenter questions whether DTC's procedures provide issuers with due process, and specifically the ''opportunity to present its objections to the allegations that form the justification for the restriction.'' [118] It believes DTC should allow the issuer to ''litigate'' the issues raised in the regulatory

[95] *See* DTC Letter I at 12.

[96] *See* STA Letter at 6. This commenter stated that the Commission has increasingly sought to impose obligations on transfer agents in this area and has expressed that transfer agents may fact liability under Section 5 of the Securities Act in some circumstances.

[97] *See* Kogan Letter at 4.

[98] *See* Kogan Letter at 3.

[99] *See* DTC Letter I at 12 (citing Rule 420(b) of the Commission's Rule of Practice, 17 CFR 201.420).

[100] *See* Shatto Letter at 1.

[101] *See* STA Letter at 5; Sichenzia Letter I at 2; Sichenzia Letter II at 2; Kogan Letter at 4–5. One of these commenters requests ''a hearing or an internal appeals process that is meaningful.'' *See* Sichenzia Letter II at 2.

[102] *See* STA Letter at 5; Sichenzia Letter II at 2.

[103] *See* STA Letter at 5; Sichenzia Letter I at 3.

[104] *See* STA Letter at 5. Commenters recommend allowing issuers to use the hearing process outlined in Rule 22. *See* STA Letter at 5; Sichenzia Letter I at 3. One of these commenters also recommends Rule 22 be amended to provide that the three person panels that hear appeals from decisions made by DTC be comprised of one person that is employed by, or a partner of, a registered transfer agent. *See* STA Letter at 5–6.

[105] *See* Sichenzia Letter II at 2.

[106] *See* Sichenzia Letter II at 2.

[107] *See* Sichenzia Letter II at 2 (citing *Int'l Power,* 2012 SEC LEXIS 844, at *20).

[108] *See* Sichenzia Letter II at 2.

[109] *See* DTC Letter I at 2–3.

[110] *Id.*

[111] *Id.*

[112] *See* DTC Letter I at 5.

[113] *See* DTC Letter I at 5 (citing Exchange Act Sections 15A(b)(6) and 6(b)(5)).

[114] *See* DTC Letter I at 5.

[115] *See* DTC Letter I at 5. DTC also characterizes FINRA Rule 6490 and NASDAQ Rule 5815 as ''appeals from fact-intensive determinations.'' It contrasts this with the Proposed Rule Change, which it states does not contemplate that DTC will engage in independent fact finding. *See* DTC Letter I at 7.

[116] *See* DTC Letter II at 2.

[117] *See* DTC Letter II at 2.

[118] *See* Kogan Letter at 4.

proceeding that forms the basis of a Global Lock.[119]

DTC responds by stating that Section 17A establishes its obligations, not the Fourteenth Amendment's due process clause.[120] It further states that even if due process standards did apply, the Proposed Rules meets those standards; due process does not require an evidentiary or in-person hearing.[121]

C. Fair Procedures

1. Comment Regarding Requirement To Provide a Legal Opinion

One commenter is concerned that Proposed Rule 22(A) gives DTC the authority to require a Legal Opinion covering any issuer security deposited at any time rather than only those securities deposited over the specific time frames that are the subject of concern.[122] This commenter states that this open-ended inquiry imposes an unfair burden on issuers.[123]

2. Comments Regarding Disproportionate Burden on Smaller Issuers

Commenters note that most of the issuers affected by DTC's actions with respect to the imposition of a Deposit Chill or Global Lock will likely be small and midsize companies, and that Restraints of DTC services can dramatically affect the lives of the officers, directors, and shareholders of these companies.[124] For this reason, two commenters believe that DTC must ensure a fair process that will reduce the likelihood of harm to innocent parties—including the issuer and its investors.[125]

One commenter questions why Sections 3 and 4 of Proposed Rule 22(B) adversely treats former shell companies and believes they should be treated the same as any other public companies.[126]

3. Comments Regarding Timing for Lifting a Deposit Chill

One commenter believes that the timing for lifting a Deposit Chill as compared to a Global Lock is counter-intuitive.[127] According to this commenter, a Global Lock, which is typically imposed as a result of enforcement proceedings, should not be easier to remedy than a Deposit Chill, which is usually imposed based on ''mere'' concerns regarding a security's eligibility.[128] The commenter recommends that Deposit Chills be lifted automatically after a certain period of time.[129]

One commenter is concerned that the Proposed Rules do not address cases of issuers whose securities were subjected to a Deposit Chill prior to the Commission's opinion in International Power.[130] This commenter suggests Deposit Chills imposed prior to International Power be lifted after a certain period of time or DTC should follow procedures to make a ''fairness determination'' based on the facts and circumstances of a particular case.[131] In its response, DTC states that if an issuer whose securities were restricted prior to International Power requests a review, DTC has been following the procedures in the Proposed Rules.[132]

4. Comments Regarding Timing for Lifting a Global Lock

Under Proposed Rule 22(B), the trigger for releasing a Global Lock is the resolution of the regulatory matter in a judicial order or an administrative decision (or some other indication that the issuer was incorrectly identified in the Proceeding). One commenter believes this standard is not workable because matters instituted by regulatory agencies may not be resolved for many years, if at all, may not be resolved in a formal fashion, and may be resolved only regarding some Defendants or some claims.[133] The commenter recommends that issuers affected by a Global Lock or a Deposit Chill should be permitted to apply to DTC one year after the imposition of any Deposit Chill or Global Lock to have their affected securities declared Eligible Securities.[134] This application could include a Legal Opinion that DTC may rely upon, and DTC could afford issuers a hearing under DTC Rule 22 should DTC determine not to release the relevant restriction based on the Legal Opinion.[135]

Another commenter argued that the timing for the release of a Global Lock is too long and stated ''it would be a near miracle if a public company in need of working capital were able to survive through years of being subject to a [G]lobal [L]ock.'' [136] This commenter recommended lifting a Global Lock six months or one year after the commencement of an enforcement proceeding, and believes at such time the burden is on the Commission to take action to suspend any further trading in the issuer's securities.[137]

5. Comments Regarding Public Notice of Deposit Chills and Global Locks

Two commenters recommend that DTC make a list of companies subject to Deposit Chills and Global Locks publicly available on its Web site.[138] Commenters stated that issuers subject to these restrictions often do not inform their shareholders or potential investors and at times issuers misrepresent the reasons for the imposition of the restrictions in order to continue raising capital.[139] These commenters also believe publicizing which issuers are subject to DTC restrictions would deter future fraudulent securities sales and protect investors.[140]

One investor also states that publication of issuer and DTC responses would be beneficial to shareholders and potential investors.[141] Another commenter requests the publication of Legal Opinions, arguing that this would reduce the number of restrictions and reduce the impact on the market.[142]

DTC states that while it understands commenters concerns, it is the issuer's responsibility to decide whether to disclose all of this information.[143] DTC issues an Important Notice when imposing a Global Lock and those Important Notices are published on DTC's Web site.[144] In its response, DTC provides that it is considering whether similar disclosures regarding Deposit Chills would be appropriate.[145]

6. Comment Regarding Persons Authorized To Initiate Process and Make Final Determinations

One commenter expressed concern over the number of individuals who would be ''Officers'' under the Proposed Rules, and thus able to make decisions to deny an issuer access to DTC.[146] This commenter stated any such decisions ''should be given serious and formal consideration by senior, experienced professionals that are familiar with securities markets and the federal

[119] *See* Kogan Letter at 4.
[120] *See* DTC Letter I at 4.
[121] *Id.*
[122] *See* Sichenzia Letter I at 5.
[123] *See* Sichenzia Letter I at 5.
[124] *See* STA Letter at 2; Sichenzia Letter I at 6.
[125] *See* STA Letter at 2.
[126] *See* Sichenzia Letter I at 6.
[127] *See* Brilleman Letter at 2.
[128] *See* Brilleman Letter at 2.
[129] *See* Brilleman Letter at 2.
[130] *See* Brilleman Letter at 1.
[131] *See* Brilleman at 1.
[132] *See* DTC Letter I at 13.
[133] *See* STA Letter at 6.
[134] *See* STA Letter at 7.
[135] *See* STA Letter at 7.
[136] *See* Sichenzia Letter I at 5.
[137] *See* Sichenzia Letter I at 5.
[138] *See* Hamilton Letter at 1; DTCC BigBake Letter I at 1; DTCC BigBake Letter II at 1.
[139] *See* Hamilton Letter at 1; DTCC BigBake Letter I at 1.
[140] *See* Hamilton Letter at 1; DTCC BigBake Letter I at 1.
[141] *See* Hamilton Letter at 1.
[142] *See* DTCC BigBake Letter I at 2.
[143] *See* DTCC Letter at 12.
[144] *See* DTCC Letter at 12.
[145] *See* DTCC Letter at 12.
[146] *See* STA Letter at 4.

securities laws, and that have the authority and independent to make decisions.'' [147] With respect to independence, this commenter recommends that an Officer making these decisions should be in a separate reporting line or senior to the Officer who made the initial decision. Along these lines, the commenter believes the Board of Directors should appoint specific officers to review issuer responses and make decisions.[148]

In its response to these comments, DTC notes that DTC Officers are by definition ''high ranking and charge with substantial responsibility.'' [149] In addition, DTC believes the reviewing Officer is independent because it was not involved in the decision to impose the restriction in the first instance.[150]

One commenter recommends that the Proposed Rules be amended to require that the initiation of an action to impose Deposit Chills should be authorized by senior Officers of DTC designated by the Board of Directors, or the Chief Executive Officer, to take such actions.[151] DTC believes this is unnecessary because a senior-level committee of officers from DTC's Operations, Risk Management, Product Management, Application Development and Maintenance, Legal and Compliance currently make, and will continue to make, the decision to impose service restrictions.[152]

IV. Description of Amendment No. 1

As noted above, one commenter requested that DTC send the Deposit Chill Notice to the issuer's transfer agent in addition to the issuer itself.[153] Amendment No. 1 incorporates this requirement into the Proposed Rules and provides that DTC will send a copy of the Deposit Chill Notice to the issuer's transfer agent via overnight courier.

V. Description of Amendment No. 2

Amendment No. 2 makes a number of clarifying revisions to the Proposed Rules to more accurately reflect their intended operation.

First, DTC proposes to amend Proposed Rules 22(A)(2)(A)(i) to clarify that when the Deposit Chill Notice is sent prior to the imposition of a Deposit Chill, the date included as the date the Deposit Chill will be imposed sets forth the date in circumstances in which the issuer does not respond to the Deposit Chill Notice in the time or manner provided in the Proposed Rules.

Second, DTC proposes to amendment Proposed Rule 22(A)(2)(A)(iv) to clarify that DTC may extend the date for an issuer to submit a Deposit Chill Response ''up to'' an additional twenty Business Days.

Third, DTC proposes to revise Proposed Rule 22(A)(2)(c) to provide when the issuer fails to comply with a deadline in connection with an Additional Information Request, DTC will provide the issuer with a Deposit Chill Decision within twenty Business Days after the missed deadline.

Fourth, DTC proposes to clarify that the Additional Information Request and the Additional Information Response are part of the record for purposes of any issuer appeal to the Commission under Proposed Rule 22(A)(2)(d).

Fifth, DTC proposes to amend Proposed Rule 22(A)(3)(a), which provides that unless the DTC expressly waives or extends in writing the applicable period for a submission of a Deposit Chill Response, an issuer waives the right to make the submission for which the deadline has passed. DTC's amendment would revise this section so that the reference to a DTC waiver relates to the applicable period for any type of submission provided for under Proposed Rule 22(A) and not only to a Deposit Chill Response.

Sixth, DTC proposes to amend Proposed Rule 22(A)(3)(c) to correct the reference to ''Deposit Chill Response'' by replacing it with ''Deposit Chill Decision.''

Seventh, among the criteria for determining the application of the procedures provided under Proposed Rule 22(B), Section 1(b) provides that the procedures will apply where a Global Lock has been imposed as a result of an issuer's failure to satisfy the requirements for lifting a Deposit Chill in Proposed Rule 22(A)(2)(c). DTC proposes to amend Proposed Rule 22(B)(1)(b) to clarify that the procedures in Proposed Rule 22(B) will also apply where an issuer has failed to satisfy the requirements for not imposing a Deposit Chill.

Eighth, DTC proposes to amend Proposed Rules 22(B)(2)(a)(i) to clarify that when the Global Lock Notice is sent prior to the imposition of a Global Lock, the date included as the date the Global Lock will be imposed sets forth the date in circumstances in which the issuer does not respond to the Global Lock Notice in the time or manner provided in the Proposed Rules.

Ninth, DTC proposes to amend Proposed Rule 22(B)(2)(a)(iii) to clarify that DTC may extend the date for an issuer to submit a Global Lock Response ''up to'' an additional twenty Business Days.

Tenth, DTC proposes to amend Proposed Rule 22(B)(2)(c) to provide in the case of a Global Lock imposed before issuance of the Global Lock Notice, DTC will provide the issuer with a Global Lock Decision within ten Business Days after receipt of the Global Lock Response, rather than within ten Business Days after imposition of the Global Lock.

Eleventh, DTC proposes to amend Proposed Rule 22(B)(2)(c) to clarify that, in the event that DTC reasonably determines that a Global Lock Response does not satisfy the requirements of the Global Lock Notice, in addition to not releasing a Global Lock that is already in place in, DTC will also impose a Global Lock if one is not yet in place.

Twelfth, DTC proposes to add a new provision providing that if DTC imposes a Global Lock pursuant to Proposed Rule 22(B)(5)(b) that the procedures contained in Proposed Rule 22(B) will apply, including that DTC will provide a Global Lock Decision within ten Business Days after it receives the Global Lock Response.

VI. Proceedings To Determine Whether to Approve or Disapprove SR–DTC–2013–11 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the Proposed Rules should be approved or disapproved. As noted above, institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the Proposed Rule as set forth in Amendment Nos. 1 and 2, and provide the Commission with arguments to support the Commission's analysis as to whether to approve or disapprove the proposal, as amended.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,[154] the Commission is providing notice of the grounds for disapproval under consideration. In particular, Section 17A(b)(3)(H) requires, among other things, that the rules of a clearing agency provide a fair procedure when the clearing agency prohibits or limits access to the clearing agency's services to a person.[155] In addition, Section 17A(b)(5) of the Exchange Act requires clearing agencies, when determining whether to deny or

[147] *See* STA Letter at 4.
[148] *See* STA Letter at 4.
[149] *See* STA Letter at 11.
[150] *See* STA Letter at 11.
[151] *See* STA Letter at 4.
[152] *See* DTC Letter I at 11.
[153] *See* STA Letter at 6.
[154] 19 15 U.S.C. 78s(b)(2)(B).
[155] 15 U.S.C. 78q–1(b)(3)(H).

limit access to its services, (i) to give persons in any proceeding an opportunity to be heard upon the specific grounds for the denial, prohibition, or limitation, and (ii) to keep a record of those proceedings.[156]

As noted above, commenters raised concerns as to whether the Proposed Rules are consistent with the requirements to provide ''fair procedures,'' ''notice'' and ''an opportunity to be heard.'' The Commission believes that question remain as to whether the Proposed Rules are consistent with the requirements of the Exchange Act.

Section 19(b)(2)(B) of the Act provides that proceedings to determine whether to approve or disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. The time for conclusion of the proceedings may be extended for up to an additional 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding or if the self-regulatory organization consents to the extension.

VII. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified above, as well as any others they may have with the Proposed Rules, as amended. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Rules, as modified by Amendment Nos. 1 and 2, are inconsistent with Sections 17A(b)(3)(H) and 17A(b)(5) or any other provision of the Exchange Act, or the rules and regulations thereunder.

Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[157] Interested persons are invited to submit written data, views, and arguments on or before April 15, 2014. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal on or before April 29, 2014. 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–DTC–2013–11 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–DTC–2013–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://dtcc.com/en/legal/sec-rule-filings.aspx.* 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–DTC–2013–11 and should be submitted on or before April 15, 2014. If comments are received, any rebuttal comments should be submitted on or before April 29, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[158]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–06459 Filed 3–24–14; 8:45 am]

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[156] 15 U.S.C. 78q–1(b)(5).

[157] Section 19(b)(2) of the Exchange Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[158] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71747; File No. SR–EDGX–2014–05]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing of Proposed Rule Change To Adopt a New Order Type Called the Mid-Point Discretionary Order

March 19, 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 March 7, 2014, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to proposes to [sic] amend: (i) Rule 11.5(c) to add a new order type called the Mid-Point Discretionary Order; and (ii) Rule 11.8(a)(2)(D) to reflect the priority of Mid-Point Discretionary Orders.

The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend: (i) Rule 11.5(c) to add a new order type called the Mid-Point Discretionary Order; and (ii) Rule 11.8(a)(2)(D) to reflect the priority of Mid-Point Discretionary Orders. The proposed Mid-Point Discretionary Order is designed to increase displayed liquidity on the Exchange while also providing Members the opportunity to achieve price-improvement by enabling the order to execute at prices up to and including the mid-point of the National Best Bid or Offer (''NBBO'').[3]

Proposed Mid-Point Discretionary Order, Rule 11.5(c)(14)

The Exchange proposes to amend Rule 11.5(c) to add a new order type called the Mid-Point Discretionary Order, which is based on and would operate similarly to the Mid-Point Discretionary Order on the EDGA Exchange, Inc. (''EDGA'').[4] Like the EDGA Mid-Point Discretionary Order, the proposed EDGX Mid-Point Discretionary Order would be a limit order that is displayed and pegged to the NBBO with discretion to execute at prices to and including the mid-point of the NBBO. Therefore, like the EDGA Mid-Point Discretionary Order, the EDGX Mid-Point Discretionary Order would include two components: (i) A displayed price which is pegged to the NBBO; and (ii) a discretionary range within which it may generally execute at prices to and including the mid-point of the NBBO.[5] The displayed price of a Mid-Point Discretionary Order to buy would be displayed at and pegged to the national best bid (''NBB'').[6] Conversely, the displayed price of a Mid-Point Discretionary Order to sell would be displayed at and pegged to the national best offer (''NBO'').[7]

The displayed prices of Mid-Point Discretionary Orders would be re-priced to track changes in the NBBO and would receive a new time stamp each time they are re-priced. The displayed price and discretionary range of a Mid-Point Discretionary Order would maintain the same time stamp, even where the displayed price is unchanged but the discretionary range changed due to a change in the mid-point of the NBBO. Like all discretionary order types, a Mid-Point Discretionary Order's sole time stamp would be the one assigned to the displayed portion of the order. A Mid-Point Discretionary Order's time stamp would only change when the displayed price is adjusted to track changes in the NBBO to which it is pegged.

Mid-Point Discretionary Orders would not independently establish or maintain the NBB or NBO; rather, the displayed prices of Mid-Point Discretionary Orders would be derived from the then-current NBB or NBO. A Mid-Point Discretionary Order would be cancelled if no NBBO exists, or, as discussed more fully below, a trading halt is declared by the listing market. The proposed Mid-Point Discretionary Order would be able to join the Exchange BBO when the Exchange BBO equals the NBBO and EDGX Book is locked or crossed by another market. If the proposed Mid-Point Discretionary Order displayed on the Exchange would create a locked or crossed market, the price of the order will be automatically adjusted by the System to one minimum price variation below the current NBO (for bids) or to one minimum price variation above the current NBB (for offers) with no discretion to execute to the mid-point of the NBBO.

As explained below, Mid-Point Discretionary Orders would not be eligible to execute against resting Discretionary Orders,[8] including contra-side Mid-Point Discretionary Orders. Mid-Point Discretionary Orders would only be eligible to execute at the mid-point of the NBBO against Mid-Point Match Orders[9] and incoming liquidity-removing orders when their limit price is equal to the mid-point of the NBBO. Mid-Point Discretionary Orders in stocks priced at $1.00 or more would only be executed in sub-penny increments when they execute at the mid-point of the NBBO against contra-side Mid-Point Match Orders.

Mid-Point Discretionary Orders may include a limit price that would specify the highest or lowest prices at which Mid-Point Discretionary Orders to buy or sell would be eligible to be executed. For example, if a Mid-Point Discretionary Order to buy is entered with a limit price that is less than the prevailing mid-point of the NBBO it would have discretion to buy only up to its limit price, not the mid-point of the NBBO. A Mid-Point Discretionary Order to buy with a limit price that is greater than the prevailing NBBO would have discretion to buy up to the mid-point of the NBBO and not to its limit price. Absent a limit price that is less than the prevailing mid-point of the NBBO, a Mid-Point Discretionary Order would retain its discretion to execute at prices up to and including the mid-point of the NBBO.[10]

As explained in more detail below, like other discretionary order types, Exchange Rule 11.8(a)(2) would require that the discretionary range of a Mid-Point Discretionary Order be given lower priority than non-displayed limit orders and the reserve quantity of Reserve Orders.[11] In addition, Mid-Point Discretionary Orders would not be eligible for routing pursuant to Exchange Rule 11.9(b)(2).

The Exchange also proposes to address how a Mid-Point Discretionary Order would comply with the National Market System Plan, also known as Limit Up/Limit Down (''LULD''), established pursuant to Rule 608 of the Exchange Act, to address extraordinary market volatility (the ''LULD Plan'').[12] In sum, the LULD Plan sets forth procedures that provide for market-wide LULD requirements that are designed to prevent trades in individual NMS Stocks from occurring outside of specified price bands. The price bands would consist of a Lower Price Band and an Upper Price Band for each NMS Stock. Under the LULD Plan, the Exchange is required to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the display of offers below the

[3] Exchange Rule 1.5(o) defines ''NBBO'' as ''the national best bid or offer.'' *See also* Rule 600(b)(42) of Regulation NMS under the Securities Exchange Act of 1934.

[4] *See* EDGA Rule 11.5(c)(17). Securities Exchange Act Release No. 67226 (June 20, 2012), 77 FR 38113 (June 26, 2012) (SR–EDGA–2012–22) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt the Mid-Point Discretionary Order).

[5] As discussed further below, the Exchange notes that the proposed Mid-Point Discretionary Order would not include a discretionary range where: (i) The NBBO is locked or crossed; (ii) for a buy (sell) order, its limit price is equal to or less (greater) than the NBB (NBO); or (iii) the price of the Upper Price Band equals or moves below an existing Protected Bid or the Lower Price Band equals or moves above an existing Protected Offer.

[6] Exchange Rule 1.5(o) defines ''NBB'' as ''the national best bid.''

[7] Exchange Rule 1.5(o) defines ''NBO'' as ''the national best offer.''

[8] *See* Exchange Rule 11.5(c)(13).

[9] Exchange Rule 11.5(c)(7).

[10] The Exchange notes that a Mid-Point Discretionary Order's discretion to trade up to and including the mid-point of the NBBO may be limited where the only available contra-side liquidity at the mid-point is represented by Mid-Point Discretionary Orders, or Non-Displayed Orders resting on the EDGX Book.

[11] Exchange Rule 11.5(c)(1).

[12] *See* Appendix A to Securities Exchange Act Release No. 67091 (May 31, 2012) 77 FR 33498 (June 6, 2012).

Lower Price Band and bids above the Upper Price Band for an NMS Stock. Like the EDGA Mid-Point Discretionary Order, the proposed EDGX Mid-Point Discretionary Orders will only execute at their displayed prices and not within their discretionary ranges when: (i) The price of the Upper Price Band equals or moves below an existing Protected Bid; or (ii) the price of the Lower Price Band equals or moves above an existing Protected Offer in accordance with Exchange Rule 11.9(a)(3). Mid-Point Discretionary Orders will resume trading against other orders in their discretionary range when the conditions in (i) or (ii) of the preceding sentence no longer exist.[13] For example, assume the NBBO is $10.00 × $10.10 and the Price Bands are $9.00 × $10.10. A Mid-Point Discretionary Order to buy is entered and is displayed at $10.00, the NBB, with discretion to $10.05, the mid-point of the NBBO. The Price Bands change to $9.00 × $9.95. The NBBO is updated to $9.95 × $10.10. The displayed price of the Mid-Point Discretionary Order is re-priced to $9.95, the new NBB, with no discretionary range, since the price of the Upper Price Band equals the NBB.

Furthermore, to comply with the LULD Plan, a Mid-Point Discretionary Order to buy would be re-priced to the Upper Price Band and not the Protected Bid where the price of the Upper Price Band moves below an existing Protected Bid. Likewise, a Mid-Point Discretionary Order to sell would be re-priced to the Lower Price Band and not the Protected Offer where the price of the Lower Price Band moves above an existing Protected Offer. When the above conditions no longer exist, Mid-Point Discretionary Orders will resume being displayed at and pegged to the NBBO. For example, assume the NBBO is $10.00 × $10.10 and the Price Bands are $9.00 × $10.10. A Mid-Point Discretionary Order to buy is entered and is displayed at $10.00, the NBB, with discretion to $10.05, the mid-point of the NBBO. The Price Bands change to $9.00 × $9.99. The displayed price of the Mid-Point Discretionary Order is re-priced to $9.99, the Upper Price Band, with no discretionary range, since the price of the Upper Price Band moved below the NBB of $10.00. The Price Bands then change to $9.00 × $10.10. The Mid-Point Discretionary Order to buy would be displayed at $10.00, the NBB, with discretion to $10.05, the mid-point of the NBBO.

While the proposed EDGX Mid-Point Discretionary Order is based on and would operate similarly to the EDGA Mid-Point Discretionary Order, the proposed EDGX Mid-Point Discretionary Order would differ from the EDGA Mid-Point Discretionary Order in four areas. The main reason for these differences is based on the different fee structures on EDGA and EDGX. EDGA maintains a taker-maker model where Members receive rebates for removing liquidity and pay a fee for adding liquidity.[14] EDGX maintains a maker-taker model where Members pay a fee for removing liquidity and receive a rebate for adding liquidity.[15]

First, unlike the EDGA Mid-Point Discretionary Order, the proposed EDGX Mid-Point Discretionary Order would not be eligible to execute immediately upon entry in the System [16] at its displayed price.[17] Instead, the proposed EDGX Mid-Point Discretionary Order would be eligible to execute at its displayed price only after it has been posted to the EDGX Book.[18] For example, assume the NBBO is $10.00 × $10.01. A Discretionary Order to buy at $10.00 with discretion to $10.01 is entered on the EDGX Book. A Mid-Point Discretionary Order to sell with a limit price of $10.01 would not execute against the resting Discretionary Order to buy that is displayed at $10.00 with discretion to $10.01. Instead, the Mid-Point Discretionary Order to sell would be posted to the EDGX Book and displayed at $10.01, the NBO, with no discretionary range because it is at its limit price. A second Discretionary Order to buy at $10.00 with discretion to $10.01 is entered. The second Discretionary Order to buy is willing to act as a liquidity remover and pay a fee. Therefore, similar to functionality on other exchanges,[19] the second Discretionary Order to buy would execute against the Mid-Point Discretionary Order to sell at $10.01.

If the Exchange would allow for the execution of a Mid-Point Discretionary Order at its displayed price immediately upon entry into the System, the order would not receive a rebate and instead would be subject to the applicable rates for removing liquidity from the EDGX Book. Therefore, to avoid being charged a fee, the proposed EDGX Mid-Point Discretionary Order would not be eligible to execute at its displayed price immediately upon entry in the System. In contrast, on EDGA, incoming Mid-Point Discretionary Orders may immediately execute upon entry and will receive a rebate for doing so. The Exchange believes that this approach is designed to accomplish the twin goals in implementing this order type—increasing both displayed liquidity and liquidity at the mid-point of the NBBO—by posting Mid-Point Discretionary Orders at their displayed prices on the EDGX Book with discretion to execute to and including the mid-point of the NBBO. The Exchange does not believe that its proposal is unique in its application of the Exchange's pricing model to the design of the functionality. For example, under the New York Stock Exchange, LLC (''NYSE'') Retail Liquidity Program, a Type 1 Retail Order, will interact only with available contra-side Retail Price Improvement (''RPI'') Orders and will not interact with, but instead will by-pass other available contra-side interest, including hidden orders priced better than RPI Orders, in the NYSE's systems.[20] The Exchange believes that, in order to provide the Retail Order a rebate, the NYSE by-passes non-RPI Orders resting on the NYSE's system because those resting orders are also expecting a rebate.[21] Therefore, the NYSE permits Type 1 Retail Orders to by-pass resting contra-side interest in favor of the RPI Order.[22]

In addition, a Mid-Point Discretionary Order not executing at its displayed price upon arrival is similar to post-only midpoint eligible orders offered by other exchanges.[23] Other exchanges also

[13] *See* Securities Exchange Act Release No. 69002 (February 27, 2013), 78 FR 14394 (March 5, 2013) (SR–EDGA–2013–08) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend EDGA Rules 1.5, 11.5, 11.8, 11.9 and 11.14 in Connection With the Implementation of the National Market System Plan to Address Extraordinary Market Volatility).

[14] *See* EDGA Fee Schedule *available at http://www.directedge.com/Trading/EDGAFeeSchedule.aspx.*

[15] *See* EDGX Fee Schedule *available at http://www.directedge.com/Trading/EDGXFeeSchedule.aspx.*

[16] Exchange Rule 1.5(cc) defines ''System'' as ''the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.''

[17] The Exchange notes that the proposed Mid-Point Discretionary Order would be permitted to execute at the mid-point of the NBBO upon entry into the System.

[18] Exchange Rule 1.5(d) defines ''EDGX Book'' as the ''System's electronic file of orders.''

[19] *See infra* notes 20 thru 28.

[20] *See* NYSE Rule 107C(k)(1).

[21] On NYSE, Retail Orders that remove liquidity receive a rebate while RPI Orders would pay a fee. *See* NYSE Fee Schedule *available at https://usequities.nyx.com/markets/nyse-equities/trading-fees* (last visited January 29, 2014).

[22] *See also* Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR–NYSE–2011–55) (Order approving the NYSE's Retail Liquidity Program on a pilot basis).

[23] *See* NYSE Rules 13(e) (providing that the NYSE's Mid-Point Passive Liquidity (''MPL'') Order may include an ''Add Liquidity Only'' (''ALO'') modifier which would prohibit the order from executing upon arrival even if marketable). *See* Securities Exchange Act Release No. 71330 (January 16, 2014), 79 FR 3895 (January 23, 2014) (SR–

Continued

permit otherwise marketable orders to post directly to that exchange and execute against later arriving orders. For example, the NYSE permits MPL–ALO Orders to not execute upon arrival even if marketable.[24] The NYSE always considers the MPL–ALO the liquidity provider, and, therefore, it would never interact with a contra-side MPL–ALO order.[25] Similarly, NYSE Arca, Inc. (''NYSE Arca'') prohibits an MPL–ALO Order from executing against an incoming MPL–ALO Order.[26] In both cases, the MPL–ALO Order would execute against later arriving contra-side mid-point liquidity ahead of the resting contra-side MPL–ALO Order. In addition, on the Chicago Board Options Exchange, Incorporated (''CBOE''), if a Silent Post-Mid Seeker Order ''is to trade upon its arrival into the system (thereby 'removing' liquidity), it will not trade, but instead rest until another order comes in for it to trade against.'' [27] Finally, BATS Exchange, Inc. (''BATS'') allows display-eligible Post Only orders to rest at prices that lock non-displayed interest, making such non-displayed interest temporarily non-executable and allowing the contra-side Post Only order to execute against later arriving orders notwithstanding such non-displayed interest.[28]

Second, Mid-Point Discretionary Orders would also not be eligible to execute against resting Discretionary Orders, including contra-side Mid-Point Discretionary Orders. For example, assume the NBBO is $10.00 × $10.02. A Discretionary Order to buy at $10.00 with discretion to $10.01 is entered on the EDGX Book. A Mid-Point Discretionary Order to buy is also entered and displayed at $10.00, the NBB, with discretion to $10.01, the mid-point of the NBBO. A Mid-Point Discretionary Order to sell would not execute against the Discretionary Order to buy or the Mid-Point Discretionary to buy at $10.01, the mid-point of the NBBO.[29] Instead, the Mid-Point Discretionary Order to sell would be posted to the EDGX Book and displayed at $10.02, the NBO, with discretion to execute to $10.01, the mid-point of the NBBO. The Exchange is proposing these restrictions so that it may offer a low cost pricing structure for the EDGX Mid-Point Discretionary Order. On EDGA, a Mid-Point Discretionary Order may execute against resting Discretionary Orders, including contra-side Mid-Point Discretionary Orders, because both orders would pay a fee. However, on EDGX, if the Exchange were to allow Mid-Point Discretionary Orders to execute against each other, the provider of liquidity would receive a rebate while the taker of liquidity would be charged no fee. Members electing to use the proposed Mid-Point Discretionary Order would forego the above described execution opportunities to receive the associated low cost pricing structure. Members willing to pay a fee for broader execution opportunities at the mid-point of the NBBO could instead choose to utilize Mid-Point Match Orders.

Third, Mid-Point Discretionary Orders would only be eligible to execute at the mid-point of the NBBO against Mid-Point Match Orders and incoming liquidity-removing orders when their limit price is equal to the mid-point of the NBBO.[30] Members utilizing these order types are explicitly adding liquidity at the mid-point of the NBBO and, thereby, provide the benefit of price improving liquidity to Users. Restricting the orders against which a Mid-Point Discretionary Order may execute to those orders that are designed to explicitly add liquidity at the mid-point of the NBBO is a reasonable means by which to encourage Members to add committed mid-point liquidity. In addition, these restrictions also enable the Exchange to offer a low cost pricing structure for the EDGX Mid-Point Discretionary Order because both Mid-Point Match Orders and incoming liquidity-removing orders would be charged a fee, enabling the Exchange to provide a rebate or no fee to the proposed Mid-Point Discretionary Order.

Fourth, on EDGA, in the event a trading halt is declared by the listing market, a resting Mid-Point Discretionary Orders would be eligible for execution once the trading halt is lifted by the listing market. Conversely, on EDGX, in the event a trading halt is declared by the listing market, any Mid-Point Discretionary Orders resting on the EDGX Book would be immediately cancelled. As described above, the approach taken by EDGX is a result of its maker-taker fee structure and serves to avoid a situation where Mid-Point Discretionary Order would be assessed a take fee when the market re-opens. As discussed above in regard to execution of Mid-Point Discretionary Orders upon entry into the System, this approach is

NYSE–2013–71) (Order Approving the MPL Order stating that the proposed MPL Order could provide market participants with better control of their execution costs). An MPL order with an ALO modifier (''MPL–ALO order'') is always considered the liquidity providing order, and, therefore, would never interact with a contra-side MPL–ALO order. *See* Securities Exchange Act Release No. 71488 (February 5, 2014), 79 FR 8215 (February 11, 2014) (SR–NYSE–2014–07) (providing that, ''[i]f triggered to trade, an MPL–ALO Order will be eligible to trade with both arriving and resting contra-side interest, but will not trade with a contra-side MPL–ALO Order''). Executions would be allocated amongst the arriving and resting contra-side interest in accordance with NYSE Rule 72. *Id.* Once posted, the NYSE's MPL–ALO Order would be considered a ''liquidity provider'' and be eligible to receive a rebate. *See* Liquidity Indicator 2 in the NYSE Fee Schedule *available at https://usequities.nyx.com/markets/nyse-equities/trading-fees* (last visited January 29, 2014). *See* the Nasdaq Stock Market LLC (''Nasdaq'') Rule 4751(f)(11) (Mid-Point Peg Post Only Order). Nasdaq's Mid-Point Peg Post Only Order may also not execute upon arrival even if marketable. *See* example 1 in *http://www.nasdaqtrader.com/content/productsservices/trading/MPPO_factsheet.pdf* (describing Nasdaq's Mid-Point Peg Post Only Order functionality).

[24] *See* NYSE Rules 13(e) (providing that the NYSE's MPL Order may include an ALO modifier which would prohibit the order from executing upon arrival even if marketable). *See* Securities Exchange Act Release No. 71330 (January 16, 2014), 79 FR 3895 (January 23, 2014) (SR–NYSE–2013–71) (Order Approving the MPL Order stating that the proposed MPL Order could provide market participants with better control of their execution costs).

[25] *See* Securities Exchange Act Release No. 71488 (February 5, 2014), 79 FR 8215 (February 11, 2014) (SR–NYSE–2014–07) (providing that, ''[i]f triggered to trade, an MPL–ALO Order will be eligible to trade with both arriving and resting contra-side interest, but will not trade with a contra-side MPL–ALO Order''). Once posted, the NYSE's MPL Order would be considered a ''liquidity provider'' and be eligible to receive a rebate. *See* Liquidity Indicator 2 in the NYSE Fee Schedule *available at https://usequities.nyx.com/markets/nyse-equities/trading-fees* (last visited January 29, 2014).

[26] *See* NYSE Arca Rules 7.31(h)(5) and (nn). NYSE Arca permits a member to elect that a marketable MPL–ALO Order interact with a resting MPL–ALO Order. *See also* Securities Exchange Act Release No. 67652 (August 14, 2012), 77 FR 50189 (August 20, 2012) (SR–NYSEArca–2012–83). If both the resting interest and the incoming MPL–ALO Order are designated to interact, the incoming MPL–ALO Order would be considered the liquidity taker and subject to applicable fees. *Id.; see also* Liquidity Indicator 2 in the NYSE Fee Schedule *available at https://usequities.nyx.com/markets/nyse-equities/trading-fees* (last visited January 29, 2014).

[27] *See* CBOE Rule 51.8(g)(12); Securities Exchange Act Release No. 67548 (July 31, 2012), 77 FR 46783 (August 6, 2012) (SR–CBOE–2012–49). *See also* Nasdaq Rule 4751(f)(11) (Mid-Point Peg Post Only Order). Nasdaq's Mid-Point Peg Post Only Order may also not execute upon arrival even if marketable. *See* example 1 in *http://www.nasdaqtrader.com/content/productsservices/trading/MPPO_factsheet.pdf* (describing Nasdaq's Mid-Point Peg Post Only Order functionality).

[28] *See* Securities Exchange Act Release No. 64475 (May 12, 2011), 76 FR 28830 (May 18, 2011) (Notice of Filing of Proposed Rule Change by BATS Exchange, Inc. to Amend BATS Rule 11.9, Entitled ''Orders and Modifiers'' and BATS Rule 11.13, Entitled ''Order Execution''); *see also* Securities Exchange Act Release No. 64754 (June 27, 2011), 76 FR 38712 (July 1, 2011) (Order Approving a Proposed Rule Change to Amend BATS Rule 11.9, Entitled ''Orders and Modifiers'' and BATS Rule 11.13, Entitled ''Order Execution'').

[29] As discussed above, the proposed EDGX Mid-Point Discretionary Order would not be eligible to execute immediately upon entry in the System at its displayed price, but would be permitted upon entry to execute at the mid-point of the NBBO. *See supra* note 17.

[30] For a description of the proposed order interaction, *see infra,* Example No. 2 under the heading ''Mid-Point Discretionary Orders Entered with Limit Prices'' and the first example under the heading ''Sub-Penny Executions''.

also consistent with the treatment of a Mid-Point Discretionary Order that contains a post only instruction at its displayed price.

Examples

The following examples demonstrate how a Mid-Point Discretionary Order would operate in various scenarios.

Mid-Point Discretionary Orders Entered Without Limit Prices

Example No. 1. Assume the NBBO is $10.00 × $10.03, resulting in a mid-point of $10.015. A Mid-Point Discretionary Order to buy 100 shares is entered without a limit price. The Mid-Point Discretionary Order would be displayed at $10.00, the NBB, with discretion to buy up to $10.015, the mid-point of the NBBO.

- A contra-side market order or marketable limit order to sell 100 shares at $10.00 would execute against the Mid-Point Discretionary Order to buy at $10.00 for 100 shares.
- A contra-side limit order to sell 100 shares at $10.01 would execute against the Mid-Point Discretionary Order to buy at $10.01 for 100 shares.
- A contra-side limit order to sell 100 shares at $10.02 would not execute against the Mid-Point Discretionary Order to buy because the Mid-Point Discretionary Order had discretion to buy only up to the mid-point of the NBBO of $10.015. The limit order to sell would be displayed at $10.02, resulting in a new NBBO mid-point of $10.01.

Example No. 2. Assume the NBBO is $10.00 × $10.03, resulting in a mid-point of $10.015. A Mid-Point Discretionary Order to buy 100 shares is entered without a limit price. The Mid-Point Discretionary Order would be displayed at $10.00, the NBB, with discretion to buy up to $10.015, the mid-point of the NBBO.[31]

- Assume the NBBO changes to $10.01 × $10.06, resulting in a new NBBO mid-point of $10.035. The displayed price of the Mid-Point Discretionary Order would be adjusted to $10.01, the NBB, with discretion to buy up to $10.035, the new NBBO mid-point.
- If the NBBO changes once again to $10.03 × $10.05 resulting in a new NBBO mid-point of $10.04, the displayed price of the Mid-Point Discretionary Order would be adjusted to $10.03, the new NBB, with discretion to buy up to $10.04, the new NBBO mid-point.

Example No. 3. Assume the NBBO is $10.00 × $10.03, resulting in a NBBO mid-point of $10.015. A Mid-Point Discretionary Order is entered to buy 100 shares without a limit price. The Mid-Point Discretionary Order would be displayed at $10.00, the NBB, with discretion to buy up to $10.015, the mid-point of the NBBO. Assume further that the EDGX Book contains two other displayed orders to buy 100 shares each at $10.00, both with time priority over the Mid-Point Discretionary Order. Assume further that there is a displayed resting order to buy at $9.99 on the EDGX Book, and no other market is publishing a bid at $10.00.

- A contra-side market order to sell 200 shares would execute against the two buy orders with time priority over the Mid-Point Discretionary Order at $10.00. The Mid-Point Discretionary Order to buy would remain on the EDGX Book and be re-price at $9.99 because it could not independently establish or maintain the NBB or NBO—rather, its displayed price would be derived from the NBB and NBO.[32]
- The Mid-Point Discretionary Order would be displayed at $9.99 with discretion to trade up to $10.01 (assuming the NBO remained at $10.03), and the resting buy order at $9.99 would maintain time priority over the Mid-Point Discretionary Order.

Mid-Point Discretionary Orders Entered With Limit Prices

The following examples demonstrate how a Mid-Point Discretionary Order entered with a limit price would operate:

Example No. 1. Assume the NBBO is $10.00 × $10.03, resulting in an NBBO mid-point of $10.015. A Mid-Point Discretionary Order is entered to buy 100 shares with a limit price of $10.03. The Mid-Point Discretionary Order would be displayed at $10.00, the NBB, with discretion to buy up to $10.015, the mid-point of the NBBO.

- A contra-side market order or marketable limit order to sell 100 shares at $10.00 would execute against the Mid-Point Discretionary Order to buy at $10.00 for 100 shares.
- A contra-side limit order to sell 100 shares at $10.01 would execute against the Mid-Point Discretionary Order to buy at $10.01 for 100 shares.
- A contra-side limit order to sell 100 shares at $10.02 would not execute against the Mid-Point Discretionary Order to buy because the Mid-Point Discretionary Order had discretion to buy only up to the mid-point of the NBBO of $10.015. The limit order to sell would be displayed at $10.02, resulting in a new NBBO mid-point of $10.01.

Example No. 2. Assume the NBBO is $10.00 × $10.04, resulting in a NBBO mid-point of $10.02. A Mid-Point Discretionary Order is entered to buy 100 shares with a limit price of 10.03. The Mid-Point Discretionary Order would be displayed at $10.00, the NBB, with discretion to buy up to $10.02, the mid-point of the NBBO.

- A contra-side limit order to sell 100 shares at $10.02 would execute against the Mid-Point Discretionary Order to buy at the NBBO mid-point of $10.02 for 100 shares.
- A contra-side limit order to sell 100 shares at $10.01 would execute against the Mid-Point Discretionary Order to buy at $10.01 for 100 shares.

Example No. 3. Assume the NBBO is $10.01 × $10.06, resulting in a NBBO mid-point of $10.035. A Mid-Point Discretionary Order is entered to buy 100 shares with a limit price of 10.03. The Mid-Point Discretionary Order to buy would be displayed at $10.01, the NBB, with discretion to buy up to $10.03, and not the NBBO mid-point of 10.035, because the NBBO mid-point would be higher than the Mid-Point Discretionary Order's limit price of $10.03.

- A contra-side limit order to sell 100 shares at $10.03 would execute against the Mid-Point Discretionary Order to buy at $10.03.
- A contra-side limit order to sell 100 shares at $10.02 would execute against the Mid-Point Discretionary Order to buy at $10.02.

Example No. 4. Assume the NBBO is $10.03 × $10.05, resulting in a NBBO mid-point of $10.04. A Mid-Point Discretionary Order is entered to buy 100 shares with a limit price of 10.03. The displayed price of the Mid-Point Discretionary Order to buy would be $10.03, its limit price and the current NBB. Therefore, the Mid-Point Discretionary Order would not have discretion to trade up to the NBBO mid-point of $10.04 because that exceeds its limit price of $10.03.

- If the NBBO changed to $10.04 × $10.06, resulting in a new NBBO mid-point of $10.05, the Mid-Point Discretionary Order to buy would be posted to the EDGX Book at its limit price of $10.03 and be displayed as a limit order with no discretion because the NBB and the NBBO mid-point exceed its limit price of $10.03.

[31] This example is designed to illustrate that the displayed price of a Mid-Point Discretionary Order entered without a limit price would continue to move in tandem with, and be displayed at, changes in the NBB (for buy orders) and the NBO (for sell orders). The Mid-Point Discretionary Order would receive a new time stamp each time it is re-priced.

[32] This example assumes that no other market is displaying a quote at the NBBO. A Mid-Point Discretionary Order that would independently establish or maintain the NBBO would be cancelled back to the Member.

• However, if the NBBO again changed to $10.02 × $10.03, then the Mid-Point Discretionary Order would again be displayed at $10.02, the NBB, with discretion to trade up to $10.025, the new NBBO mid-point.

Example No. 5. Assume from Example No. 4 above that the NBBO remains $10.04 × $10.06, with a NBBO mid-point of $10.05, and the Mid-Point Discretionary Order to buy continues to be posted to the EDGX Book and displayed at its limit price of $10.03. The EDGX Book contains a displayed order to buy 100 shares at $10.04 and two separate displayed orders to buy 100 shares each at $10.03 with time priority over the Mid-Point Discretionary Order. Assume further that there is also a displayed order to buy 100 shares at $10.02 on the EDGX Book, and no other market is publishing a bid at either $10.03 or $10.04.

• A contra-side market order to sell 300 shares would execute first against the buy order on the book at $10.04, and then against the two buy orders on the book with time priority over the Mid-Point Discretionary Order at $10.03. The Mid-Point Discretionary Order to buy at $10.03 would remain on the EDGX Book. This execution would result in a new NBBO of $10.03 × $10.06. However, the Mid-Point Discretionary Order would be re-priced to $10.02 because it could not independently establish or maintain an NBB or NBO—rather, its displayed price would be derived from the then current NBB and NBO. The Mid-Point Discretionary Order would be displayed at $10.02 with discretion to trade up to $10.03, its limit price (assuming the NBO remained at $10.06). The Mid-Point Discretionary Order would receive a new time stamp with time priority behind the resting buy order at $10.02.

Operation of the Mid-Point Discretionary Order during a Locked or Crossed Market

Example No. 1. Assume the NBBO is $10.03 × $10.03 resulting in a locked market. The Exchange BBO is $10.00 × $10.03. A Mid-Point Discretionary Order to buy with a limit price of $10.04 is entered. Because the Mid-Point Discretionary Order would cross the NBO of $10.03, it is displayed on the EDGX Book at $10.02, one minimum price variation away from the NBO with no discretionary range. The Exchange BBO is now adjusted to $10.02 × $10.03.

Example No. 2. Assume the NBBO is $10.03 × $10.03 resulting in a locked market. The Exchange BBO is $10.00 × $10.03. A Mid-Point Discretionary Order to buy with a limit price of $10.02 is entered. The Mid-Point Discretionary Order is posted to the EDGX Book at $10.02 with no discretionary range. The Exchange BBO is updated to $10.02 × $10.03.

Example No. 3. Assume the NBBO is $10.03 × $10.03 resulting in a locked market. The Exchange BBO is $10.00 (400 shares) × $10.03 (100 shares).[33] A Mid-Point Discretionary Order to sell with a limit price of $10.02 is entered. The Mid-Point Discretionary Order joins the Exchange NBO and is posted to the EDGX Book at $10.03 because it does not independently establish the NBO and there are displayed sell orders on the EDGX Book. The Exchange BBO is updated to $10.00 (400 shares) × $10.03 (200 shares).

Example No. 4. Assume the NBBO is $10.04 × $10.03 resulting in a crossed market. The Exchange BBO is $10.00 × $10.03. A Mid-Point Discretionary Order to buy with a limit price of $10.04 is entered. Because the Mid-Point Discretionary Order would cross the NBO of $10.03, it displayed on the EDGX Book at $10.02, one minimum price variation away from the NBO with no discretionary range. The Exchange BBO is now adjusted to $10.02 × $10.03.

Example No. 5. Assume the NBBO is $10.05 × $10.02 resulting in a crossed market. The Exchange BBO is $10.00 × $10.02. A Mid-Point Discretionary Order to buy with a limit price of $10.01 is entered. The Mid-Point Discretionary Order is posted to the EDGX Book at $10.01 because it does not lock or cross the NBO. The Exchange BBO is updated to $10.01 × $10.02.

Example No. 6. Assume the NBBO is $10.05 × $10.03 resulting in a crossed market. The Exchange BBO is $10.00 (400 shares) × $10.03 (100 shares).[34] A Mid-Point Discretionary Order to sell with a limit price of $10.03 is entered. The Mid-Point Discretionary Order joins the Exchange NBO and is posted to the EDGX Book at $10.03 because it does not independently establish the NBO and there are displayed sell orders on the EDGX Book. The Exchange BBO is updated to $10.00 (400 shares) × $10.03 (200 shares).

Sub-Penny Executions

Mid-Point Discretionary Orders in stocks priced at $1.00 or more would only be executed in sub-penny increments when they execute at the mid-point of the NBBO against contra-side Mid-Point Match Orders. Mid-Point Discretionary Orders are not eligible to execute against contra-side Mid-Point Discretionary Orders at the mid-point of the NBBO. Mid-Point Discretionary Orders would execute against all other order types solely in whole penny increments. Mid-Point Discretionary Orders would not be displayed or ranked in sub-penny increments.

Example No. 1. Assume the NBBO is $10.00 × $10.03, resulting in a NBBO mid-point of $10.015. A Mid-Point Discretionary Order is entered to buy 100 shares with a limit price of $10.02. The Mid-Point Discretionary Order would be displayed at $10.00, the NBB, with discretion to buy up to $10.015, the mid-point of the NBBO.

• A contra-side Mid-Point Match order sell 100 shares would execute against the Mid-Point Discretionary Order to buy at the NBBO mid-point of $10.015.

• Alternatively, a contra-side Mid-Point Discretionary Order to sell 100 shares would be displayed at $10.03, the NBO, with discretion to sell to $10.015, the mid-point of the NBBO. The Mid-Point Discretionary Order to sell would not execute against the Mid-Point Discretionary Order to buy at the NBBO mid-point of $10.015 because Mid-Point Discretionary Orders are not eligible to execute against contra-side Mid-Point Discretionary Orders at the mid-point of the NBBO.

Example No. 2. Assume the NBBO is $10.00 × $10.03, resulting in a NBBO mid-point of $10.015. A Mid-Point Discretionary Order is entered to buy 100 shares with a limit price of $10.02. The Mid-Point Discretionary Order would be displayed at $10.00, the NBB, with discretion to buy up to $10.015, the mid-point of the NBBO. Assume the NBBO changes to $10.02 × $10.05, resulting in a new NBBO mid-point of $10.035.

• The Mid-Point Discretionary Order to buy would be displayed at $10.02, the NBB, with no discretion to trade above $10.02 to the NBBO mid-point of $10.035 because its limit price prevents executions above $10.02. A contra-side Mid-Point Match Order to sell 100 shares is entered but would not execute against the Mid-Point Discretionary Order to buy at $10.02, because the NBBO mid-point of $10.035 would exceed its limit price. The Mid-Point Match Order to sell would be entered on the EDGX Book at the mid-point of the NBBO.

Proposed Amendments to Rule 11.8(a)

The Exchange proposes to amend Rule 11.8(a)(2)(D) to reflect the priority that Mid-Point Discretionary Orders would have when they are executed within their discretionary range. Rule 11.8(a)(2) states, in sum, that the System

[33] This example assumes that the Exchange BBO equals the NBBO and did not create a locked or crossed market.

[34] *Id.*

shall execute equally priced trading interest in time priority in the following order: (i) Displayed size of limit orders; (ii) Mid-Point Match Orders; (ii) non-displayed limit orders and the reserve quantity of Reserve Orders; (iii) discretionary range of discretionary orders as set forth in current Rule 11.5(c)(13); and (iv) Route Peg Orders as set forth in current Rule 11.5(c)(17).

When Mid-Point Discretionary Orders execute at their displayed price, they would have the same priority as that of the displayed size of limit orders, in accordance with Rule 11.8(a)(2)(A). However, when they execute within their discretionary range, the Exchange proposes that they would have the same priority as the discretionary range of Discretionary Orders, as set forth in Rule 11.8(a)(2)(D). Therefore, the Exchange is proposing to amend Rule 11.8(a)(2)(D) to account for the priority of Mid-Point Discretionary Orders when they act within their discretionary range.

Example. Assume the NBBO is $10.00 × $10.04, resulting in a NBBO mid-point of $10.02. A Mid-Point Discretionary Order is entered to buy 100 shares with a limit price of $10.02. A Non-Displayed order to buy 100 shares at $10.02 is subsequently entered. The Mid-Point Discretionary Order would be displayed at $10.00, the NBB, with discretion to buy up to $10.02, the NBBO mid-point.

• A contra-side limit order to sell 100 shares at $10.02 would execute against the Non-Displayed order, and not the Mid-Point Discretionary Order, since Non-Displayed orders would have priority over the discretionary range of Mid-Point Discretionary Orders in accordance with Rule 11.8(a)(2).

In addition, the Exchange proposes new Rule 11.8(a)(9) to address the priority of orders when a Mid-Point Discretionary Order is posted the EDGX Book. Where orders to buy (or sell) are made at the same price, Exchange Rule 11.8(a)(2) generally requires, that the order clearly established as the first entered into the System at that price shall have precedence up to the number of shares of stock specified in the order. As described above, the proposed EDGX Mid-Point Discretionary Order would not be eligible to execute immediately upon entry in the System at its displayed price.[35] Instead, the proposed EDGX Mid-Point Discretionary Order would be eligible to execute at its displayed price only after it has been posted to the EDGX Book. Therefore, the Exchange proposes to add subparagraph (9) to Rule 11.8(a) to clarify that, in accordance with proposed Rule 11.5(c)(14), where a Mid-Point Discretionary Order does not execute against certain marketable contra-side interest resting on the EDGX Book, it will, notwithstanding Exchange Rule 11.8(a)(2) described above, be posted directly to the EDGX Book and will be eligible to execute against later arriving marketable contra-side orders.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act[36] and further the objectives of Section 6(b)(5) of the Act,[37] because they are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and, in general, to protect investors and the public interest.

Proposed Mid-Point Discretionary Order, Rule 11.5(c)(14)

The Exchange believes that the proposed Mid-Point Discretionary Order is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide Users[38] with an order type that may result in the efficient execution of such orders and provide additional flexibility and increased functionality to the Exchange's System and its Users. Specifically, the Exchange believes that Users may receive more efficient order executions by providing them greater flexibility to be displayed at the NBBO with discretion to execute up to and including the mid-point of the NBBO, resulting in the potential benefit of price improvement. The proposed Mid-Point Discretionary Order is designed to increase displayed liquidity on the Exchange while also enhancing execution opportunities at the mid-point of the NBBO. Promotion of displayed liquidity at the NBBO enhances market quality for all Users and promotes competition amongst market centers. Therefore, the Exchange believes that the proposed Mid-Point Discretionary Order will promote just and equitable principles of trade and perfect the mechanism of a free and open market and a national market system because it is designed to: (i) Contribute to the displayed liquidity on the Exchange at the NBBO while providing additional opportunities for price improvement, which would, in turn, benefit competition due to improvements to overall market quality; and (ii) increase competition between exchanges offering similar functionality.

The proposed Mid-Point Discretionary Order is similar to and based on the Mid-Point Discretionary Order on EDGA.[39] While the proposed EDGX Mid-Point Discretionary Order would function similarly to the existing Mid-Point Discretionary Order on EDGA, the order types would differ in four areas. The Exchange does not believe that these differences are significant or presents unique issues with respect to the consistency of the Mid-Point Discretionary Order with the requirements of the Act. The Exchange believes these differences are reasonable due to the different fee structures on EDGA and EDGX and are designed to encourage explicitly priced liquidity at the mid-point of the NBBO, while enabling the Exchange to offer a low cost pricing structure for the order type. EDGA maintains a taker-maker model where Members receive rebates for removing liquidity and pay a fee for adding liquidity.[40] EDGX maintains a maker-taker model where Members pay a fee for removing liquidity and receive a rebate for adding liquidity.[41]

First, unlike the EDGA Mid-Point Discretionary Order, the proposed EDGX Mid-Point Discretionary Order would not be eligible to execute immediately upon entry in the System at its displayed price. Instead, the proposed EDGX Mid-Point Discretionary Order would be eligible to execute at its displayed price only after it has been posted to the EDGX Book. If the Exchange would allow for the execution of a Mid-Point Discretionary Order at its displayed price immediately upon entry into the System, the order would not receive a rebate and instead would be subject to the applicable rates for removing liquidity from the EDGX

[35] *See supra* notes 16 thru 19 and accompanying text. Mid-Point Discretionary Orders would also not be eligible to execute against resting Discretionary Orders, including contra-side Mid-Point Discretionary Orders. *See supra* notes 29 and accompanying text; *see also infra* notes 47 thru 48 and accompanying text.

[36] 15 U.S.C. 78f(b).

[37] 15 U.S.C. 78f(b)(5).

[38] Exchange Rule 1.5(ee) defines ''User'' as ''any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to [Exchange] Rule 11.3.''

[39] *See* EDGA Rule 11.5(c)(17). Securities Exchange Act Release No. 67226 (June 20, 2012), 77 FR 38113 (June 26, 2013) (SR–EDGA–2012–22) (Notice of Filing and Immediate Effectiveness Of Proposed Rule Change to Adopt the Mid-Point Discretionary Order).

[40] *See* EDGA Fee Schedule *available at http://www.directedge.com/Trading/EDGAFeeSchedule.aspx.*

[41] *See* EDGX Fee Schedule *available at http://www.directedge.com/Trading/EDGXFeeSchedule.aspx.*

Book. Therefore, to avoid being charged a fee, the proposed EDGX Mid-Point Discretionary Order would not be eligible to execute at its displayed price immediately upon entry in the System.[42] It would be eligible to execute at its displayed price against incoming liquidity removing orders because such orders are willing to accept the immediate execution and not post to the EDGX Book. Orders resting on the EDGX Book are willing to forgo an execution against the incoming Mid-Point Discretionary Order at its displayed price here because the User is expecting to receive a rebate once posted to the EDGX Book. The Exchange believes that this approach is designed to accomplish the twin goals in implementing this order type—increasing both displayed liquidity and liquidity at the mid-point of the NBBO on the EDGX Book. In addition, the Exchange believes this would optimize available displayed liquidity for incoming orders and provide price improvement at the mid-point of the NBBO. The Exchange does not believe that its proposal is unique in its application of the Exchange's pricing model to the design of the functionality.[43]

The Exchange does not believe that there is anything novel or controversial about permitting otherwise marketable orders to post to the EDGX Book and execute against later arriving orders in a fully transparent manner that is consistent with pre-existing rules of other exchanges described above.[44] Permitting otherwise marketable orders to post directly to that exchange is designed to provide Users with better control over their execution costs. It allows Users to post aggressively priced liquidity, as such Users have certainty as to the fee or rebate they will receive from the Exchange if their order is executed. Without such ability, the Exchange believes that certain Users would simply post less aggressively priced liquidity, and prices available for market participants, including retail investors, would deteriorate. Members remain focused on their trading costs, and in a pricing environment characterized by fees on one side of a trade being used to fund rebates on the other side, it is entirely understandable that some Members may wish to structure their trading activity in a manner that is more likely to avoid a fee and earn a rebate.[45] Therefore, the Exchange believes Mid-Point Discretionary Order not executing at their displayed price upon arrival furthers the objectives of Section 6(b)(5) of the Act,[46] because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes this to be the case even if, as described above, a Mid-Point Discretionary Order will execute in certain circumstances against a later arriving contra-side order when there is non-displayed contra-side interest resting on the Exchange's order book at that price. As discussed above, this order, once resting, is expecting to receive a rebate for any execution.

Second, Mid-Point Discretionary Orders would also not be eligible to execute against resting Discretionary Orders, including contra-side Mid-Point Discretionary Orders. The Exchange believes precluding the above executions promotes just and equitable principles of trade by permitting the Exchange to offer a low cost pricing structure while also offering an order type that provides Members the opportunity to achieve price-improvement at prices up to and including the mid-point of the NBBO. On EDGA, a Mid-Point Discretionary Order may execute against resting Discretionary Orders, including contra-side Mid-Point Discretionary Orders, because both orders would pay a fee. However, on EDGX, if the Exchange were to allow Mid-Point Discretionary Orders to execute against each other, the provider of liquidity would receive a rebate while the taker of liquidity would be charged no fee. Members willing to pay a fee for broader execution opportunities at the mid-point of the NBBO could instead choose to utilize Mid-Point Match Orders. Precluding Mid-Point Discretionary Orders from executing as discussed above follows the precedent established by other order types, such as Post Only Orders, in which Members choose to forgo some execution opportunities to avoid paying a fee.[47] Since the Exchange does not offer a Post Only Mid-Point Match Order,[48] Mid-Point Discretionary Orders provide a means to interact with liquidity at the mid-point of the NBBO, while having the added benefit of not incurring a fee. In exchange, the User of a Mid-Point Discretionary Order foregoes certain execution opportunities and therefore incurs risk of not receiving an execution. The above restriction would provide a Mid-Point Discretionary Order the opportunity to become a liquidity provider and receive a rebate. Furthermore, the Exchange believes that this approach is consistent with the Exchange's belief that Mid-Point Discretionary Orders would be utilized primarily by Members seeking access to liquidity at the mid-point of the NBBO while seeking to not be charged a fee. The proposed Mid-Point Discretionary Order is designed to provide Members with better control over their execution costs and with a means to offer price improvement opportunities. As stated above, Members remain focused on their trading costs and may wish to structure their trading activity in a manner that is more likely to control those costs. Other Members may prefer execution certainty and are less cost-sensitive, and would thus be less likely to use the Mid-Point Discretionary Order. Based on the foregoing, the Exchange believes precluding Mid-Point Discretionary Orders from executing against each other is designed to promote just and equitable principles of trade because it would enable Members to achieve potential price improvement and a low cost fee structure by using the proposed Mid-Point Discretionary Order.

Third, the Exchange believes that limiting the circumstance within which a Mid-Point Discretionary Order may execute against orders at the mid-point of the NBBO is designed to promote just and equitable principles of trade by incentivizing Members to submit orders that explicitly contribute to liquidity at the mid-point of the NBBO while also enabling the Exchange to provide a low cost pricing structure for the order type.

[42] In contrast, on EDGA, incoming Mid-Point Discretionary Orders may immediately execute upon entry and will receive a rebate for doing so.

[43] *See supra* notes 20 thru 28 and accompanying text.

[44] *See supra* notes 20 thru 28 and accompanying text.

[45] *See e.g.,* Securities Exchange Act Release No. 69194 (March 20, 2013), 78 FR 18386 at 18391 n. 29 (March 26, 2013) (SR–Phlx–2013–24) (Notice of Filing of Proposed Rule Change); *see also* Securities Exchange Act Release No. 69452 (April 25, 2013), 78 FR 25512 at 25514 (May 1, 2013) (Order Approving SR–PHLX–2013–24) (stating that the Midpoint Peg Post-Only Order ''is intended to provide market participants with better control over their execution costs and to provide a means to offer price improvement opportunities'').

[46] 15 U.S.C. 78f(b)(5).

[47] *See supra* notes 20 thru 28 and accompanying text. A ''Post Only Order'' is precluded from executing against orders resting on the EDGX Book upon entry in the System and receives a rebate for adding liquidity. *See* Exchange Rule 11.5(c)(5); *see also,* EDGX Fee Schedule *available at http://www.directedge.com/Trading/EDGXFeeSchedule.aspx*. NYSE Arca permits members to designate a limit order as ''No Mid-Point Execution'', so that the limit order will ignore mid-point priced orders. NYSE Arca Rule 7.31(h)(5).

[48] For securities priced at or above $1.00, Mid-Point Match Orders incur a fee regardless of whether they add or remove liquidity at the mid-point of the NBBO. *See* Flags MM and MT on the EDGX Fee Schedule *available at http://www.directedge.com/Trading/EDGXFeeSchedule.aspx*.

The proposed Mid-Point Discretionary Order would only be eligible to execute at the mid-point of the NBBO against contra-side Mid-Point Match Orders and incoming liquidity-removing orders when their limit price equals the mid-point of the NBBO. Members utilizing these order types are explicitly adding liquidity at the mid-point of the NBBO and, thereby, provide the benefit of price improving liquidity to Users and their incoming orders. Restricting the orders against which a Mid-Point Discretionary Order may execute to those orders that are designed to explicitly add liquidity at the mid-point of the NBBO is a reasonable means by which to encourage Members to add committed mid-point liquidity. The Exchange believes that encouraging orders that explicitly add liquidity at the mid-point of the NBBO, rather than by happenstance, would enhance price improvement opportunities on the Exchange by seeking to increase the overall liquidity on the Exchange at the mid-point of the NBBO. The Exchange believes restricting the orders against which the proposed Mid-Point Discretionary Order may execute at the mid-point of the NBBO to Mid-Point Match Orders promotes just and equitable principles of trade because it is designed to encourage the use of Mid-Point Match Orders, motivating Members seeking price improvement to direct their orders to EDGX because they would have a heightened expectation of liquidity at the midpoint of the NBBO. In addition, these restrictions also enable the Exchange to offer a low cost pricing structure for the EDGX Mid-Point Discretionary Order because both Mid-Point Match Orders and incoming liquidity-removing orders would be charged a fee, enabling the Exchange to provide a rebate or no fee to the proposed Mid-Point Discretionary Order.

Fourth, on EDGA, in the event a trading halt is declared by the listing market, a resting Mid-Point Discretionary Orders would be eligible for execution once the trading halt is lifted by the listing market. Conversely, on EDGX, in the event a trading halt is declared by the listing market, any Mid-Point Discretionary Orders resting on the EDGX Book would be immediately cancelled. As described above, the approach taken by EDGX is a result of its maker-taker fee structure and serves to avoid a situation where Mid-Point Discretionary Orders would be assessed a take fee when the market re-opens. As discussed above in regard to execution of Mid-Point Discretionary Orders upon entry into the System, this approach is also consistent with the treatment of a Mid-Point Discretionary Order as containing a post only instruction at its displayed price.

The Mid-Point Discretionary Order would also be similar to the Exchange's existing Pegged Order [49] and Mid-Point Match Order because, like these order types, a Mid-Point Discretionary Order would receive a new time stamp each time it was automatically adjusted, and it would not be eligible for routing pursuant to Rule 11.9(b)(2). Like a Pegged Order, a Mid-Point Discretionary Order's displayed price would be pegged to and automatically adjusted in response to changes to the NBB or NBO. Also, like a Pegged Order, if the proposed Mid-Point Discretionary Order displayed on the Exchange would lock the market, the price of the order will be automatically adjusted by the System to one minimum price variation below the current NBO (for bids) or to one minimum price variation above the current NBB (for offers). In addition, the Mid-Point Discretionary Order will also be similar to the Exchange's Mid-Point Match Order, because both would be eligible to receive sub-penny executions at the mid-point of the NBBO. However, unlike the Mid-Point Match Order, the Mid-Point Discretionary Order includes a displayed component, which would provide the added benefit of transparency. The proposed Mid-Point Discretionary Order would also be similar to the Exchange's existing Discretionary Order in that it would include a displayed order at a specified price (an objectively determined price based on the prevailing NBB or NBO) and a non-displayed order at a specified price (an objectively determined price based on the mid-point of the NBBO), subject to any limits the User attaches the Mid-Point Discretionary Order. The Exchange believes that this proposed order type would benefit its Users by offering greater flexibility to display liquidity at the NBBO with discretion generally to execute to the NBBO mid-point, resulting in additional opportunities for price improvement for contra-side orders.

The Exchange further believes that the proposed Mid-Point Discretionary Order is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system because it is based on and would enable the Exchange to offer an order type that would compete with similar order types on other exchanges. For example, the Mid-Point Discretionary Order is similar to NYSE Arca's Pegged Order [50] and Discretionary Order.[51] NYSE Arca's Pegged Order is defined as a ''limit order to buy or sell a stated amount of a security at a displayed price set to track the current bid or ask of the NBBO in an amount specified by the User. . . . A Pegged Order may be designated as a . . . Discretionary Order.'' NYSE Arca defines a Discretionary Order to be ''[a]n order to buy or sell a stated amount of a security at a specified, undisplayed price (the 'discretionary price'), in addition to at a specified, displayed price ('displayed price').'' The Mid-Point Discretionary Order is similar to Arca's Pegged Order when it is designated as a Discretionary Order insofar as the displayed components of both are designed to track the prevailing NBB and NBO. While the undisplayed component of the Mid-Point Discretionary Order presents a variation on the undisplayed component of Arca's order type, insofar as the former sets a more specific parameter on the discretionary aspect of the order (*i.e.,* to execute to the mid-point of the NBBO), the Exchange does not believe that such variation presents unique issues with respect to the consistency of the Mid-Point Discretionary Order with the requirements of the Act.

The proposed Mid-Point Discretionary Order is also not designed to permit unfair discrimination between customers, issuers, brokers, or dealers because the proposed Mid-Point Discretionary Order would be available to all Members on a uniform basis.

Proposed Amendment to Rule 11.8(a)

The Exchange also believes its proposal to amend Rule 11.8(a)(2) to reflect the priority that Mid-Point Discretionary Orders is designed to promote just and equitable principles of trade. Rule 11.8(a)(2) states, in sum, that the System shall execute equally priced trading interest in time priority in the following order: (i) Displayed size of limit orders; (ii) Mid-Point Match Orders; (ii) non-displayed limit orders and the reserve quantity of Reserve Orders; (iii) discretionary range of Discretionary Orders as set forth in current Rule 11.5(c)(13); and (iv) Route Peg Orders as set forth in current Rule 11.5(c)(17). Under the proposal, when Mid-Point Discretionary Orders execute at their displayed price, they would have the same priority as that of the displayed size of limit orders, in accordance with Rule 11.8(a)(2)(A). However, when they execute within their discretionary range, the Exchange

[49] Exchange Rule 11.5(c)(6).

[50] NYSE Arca Rule 7.31(cc).

[51] NYSE Arca Rule 7.31(h)(2)

proposes that they maintain priority behind Mid-Point Match Orders but maintain the same priority as the discretionary range of Discretionary Orders. The Exchange believes the proposed priority for the discretionary range of Mid-Point Discretionary Orders is consistent with the Act because it continues to provide priority to displayed orders on the Exchange and to orders that are designed to provide liquidity at a set price level, such as the mid-point of the NBBO or the limit price of a Reserve Order. Lastly, the Exchange notes that the proposed priority for the discretionary range or Mid-Point Discretionary Orders on EDGX is identical to the priority for the discretionary range of Mid-Point Discretionary Orders on EDGA.[52]

The Exchange also believes it is reasonable and appropriate that the displayed price and discretionary range of a Mid-Point Discretionary Order maintain the same time stamp, even when the displayed price is unchanged but the discretionary range changed due to a new mid-point of the NBBO being established. It is well founded that the price priority of a discretionary order is based on its displayed price and not its discretionary range.[53] Should the discretionary range widen or decrease as a result of a new mid-point of the NBBO being established, the time stamp and priority of the displayed price would remain unchanged so long as the NBBO that the order is pegged to did not change.

In addition, the Exchange believes proposed subparagraph (9) to Rule 11.8(a) furthers the objectives of Section 6(b)(5) of the Act,[54] because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that permitting otherwise marketable orders to post directly to the EDGX Book is reasonable because it is designed to provide Users with better control over their execution costs. Once posted to the EDGX Book, the proposed EDGX Mid-Point Discretionary Order would receive a rebate if executed at its displayed price. This allows Users to post aggressively priced liquidity by providing certainty as to the fee or rebate they will receive from the Exchange if their order is executed. In addition, as stated above, the Exchange does not believe that there is anything novel or controversial about permitting otherwise marketable orders to post to the EDGX Book and execute against later arriving orders in a fully transparent manner that is consistent with pre-existing rules of other exchanges.[55]

Lastly, the Exchange believes it is reasonable for a Mid-Point Discretionary Order to retain its time stamp and priority in relation to other Discretionary Orders when the discretionary range widens or decreases in response to a new mid-point of the NBBO being established. A Mid-Point Discretionary Order's discretionary range is capped by the mid-point of the NBBO, which is an objectively determined price that the User cannot independently establish. As stated above, no price priority is afforded to orders based on their discretionary range. Therefore, a Mid-Point Discretionary Order's discretionary range would not receive a new time stamp when the discretionary range widens or decreases in response to a new mid-point of the NBBO being established; nor would the order's priority be changed in relation to other Discretionary Orders on the EDGX Book.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would increase intermarket competition among the exchanges because the Mid-Point Discretionary Order will directly compete with a similar order types offered by other exchanges.[56] The Exchange believes that Users may receive more efficient order executions by providing them greater flexibility to be displayed at the NBBO with discretion to execute to the mid-point of the NBBO, resulting in the potential benefit of price improvement. Promotion of displayed liquidity at the NBBO enhances market quality for all market participants and promotes competition amongst market enters. The Exchange believes that the proposed Mid-Point Discretionary Order will contribute to the displayed liquidity on the Exchange, which would, in turn, benefit competition due to improvements to the overall market quality of the Exchange. The proposed rule change would not burden intramarket competition because the Mid-Point Discretionary Order would be available to all Members on a uniform basis.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from its Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. In particular, the Commission seeks comment on the following:

- Would the Mid-Point Discretionary Order create opportunities for queue-jumping strategies by executing against later-arriving orders rather than against identically-priced orders already resting on the order book?
- Is it consistent with fair and orderly markets to prevent Mid-Point Discretionary Orders from executing against contra-side orders with prices that are within the net economic range (limit price with fee/rebate) specified in such orders?

[52] *See* EDGA Rule 11.8(a)(2). *See also* BATS Rule 11.12(a)(2) (placing the discretionary range of discretionary order last in priority behind the displayed size of limit order, non-displayed limit orders, pegged orders, mid-point peg orders and the reserve size of orders); Securities Exchange Act Release No. 67226 (June 20, 2012), 77 FR 38113 (June 26, 2012) (SR–EDGA–2012–22) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt the Mid-Point Discretionary Order).

[53] NYSE Arca permits Pegged Orders to also be designated as Discretionary Orders. *See* NYSE Arca Rule 7.31(cc) and 7.31(h)(2). In such case, Discretionary Orders are ranked based on their displayed price, not discretionary range, and continue to be ranked at their displayed price when the discretionary portion of the order is decremented. *See* NYSE Arca Rule 7.36(1)(C).

[54] 15 U.S.C. 78f(b)(5).

[55] *See supra* notes 42 thru 48 and accompanying text.

[56] *See* NYSE Arca Rules 7.31(cc), 7.31(h)(2), 7.31(h)(5), and 7.31(nn), Nasdaq Rules 4751(f)(4) and 4751(11) [sic], BATS Rule 11.9(c)(8), NYSE Rule 13, and CBOE Rule 51.8(g)(12).

• Would leaving Mid-Point Discretionary Orders resting on the order book even in the presence of contra-side orders with prices that are within the net economic range (limit price with fee/rebate) specified in the Mid-Point Discretionary Order add unnecessary complexity to the Exchange's priority rules and the equity markets generally?

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–EDGX–2014–05 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–EDGX–2014–05. 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 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2014–05, and should be submitted on or before April 15, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[57]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–06461 Filed 3–24–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71744; File No. SR–CBOE–2014–024]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Appointment Cost for CBOE Volatility Index (VIX) Options

March 19, 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 March 14, 2014, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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

CBOE proposes to amend CBOE Rule 8.3 (Appointment of Market-Makers) relating to the appointment cost for options on the CBOE Volatility index (''VIX''). The text of the proposed rule change is 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.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to amend CBOE Rule 8.3 relating to the appointment cost for VIX options. Presently, VIX options have an appointment cost of .50. CBOE proposes to reduce the appointment cost to .499, effective April 1, 2014. Market-Makers then could utilize the excess appointment capacity of .001 to hold an appointment and quote electronically in an additional Hybrid option class, which promotes competition and efficiency.

2. Statutory Basis

The Exchange believes the proposed rule changes are consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[3] Specifically, the Exchange believes the proposed rule changes are consistent with the Section 6(b)(5)[4] 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.

The Exchange believes that reducing the appointment cost for VIX options will foster competition by enabling Market-Makers to use the excess capacity resulting from the reduced appointment cost in VIX options to quote an additional Hybrid option class. The Exchange believes that the appointment cost reduction for VIX options will promote competition and efficiency. The Exchange believes that the marketplace will benefit because the Exchange is incentivizing Market-Makers to quote electronically an additional Hybrid option class.

[57] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, CBOE believes that the appointment cost reduction for VIX options will enhance competition among market participants and benefit of [sic] investors and the marketplace because Market-Makers with an appointment in VIX options may use the excess capacity to quote electronically an additional Hybrid option class.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [5] and Rule 19b–4(f)(6) thereunder.[6]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative on April 1, 2014. According to the Exchange, waiving the 30-day operative delay will allow Market-Makers with an appointment in VIX options to electronically quote an additional Hybrid option class and thus promote competition and efficiency without undue delay. Based on the Exchange's statements, the Commission believes that waiving the 30-day operative delay so that the proposed rule change may become operative on April 1, 2014, is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative on April 1, 2014.[7]

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–2014–024 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–2014–024. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. 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–2014–024 and should be submitted on or before April 15, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–06458 Filed 3–24–14; 8:45 am]

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[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[7] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71746; File No. SR–BATS–2014–006]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

March 19, 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 March 7, 2014, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

Members [5] and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to implement pricing, effective immediately, applicable to the Exchange's options platform (''BATS Options'') with respect to executions that occur as part of the modifications to the market opening procedures as described in Rule 20.7 [sic] (the ''Market Opening Procedures''), which was approved on March 15 [sic], 2014.[6] Under the Market Opening Procedures, the Exchange will accept orders and quotes for queuing in a series of options prior to the opening of trading in that series of options. As such and as further described in Rule 20.7 [sic], executions might occur in a series as part of the Market Opening Procedures as the series is being opened for trading. The Exchange is proposing that for executions occurring as part of the Market Opening Procedures, the Exchange will neither charge a fee nor provide a rebate.

Currently, all orders executed on BATS Options are subject to standard pricing, which includes variable fees and/or rebates based on whether the order adds or removes liquidity, the capacity of the order (Professional,[7] Firm, Market Maker,[8] or Customer [9] orders), a Member's average daily trading volume, and whether the issue is a penny pilot issue, among others. In addition to standard rebates, the Exchange does not charge a fee nor does it provide a rebate for executions in Mini Options.[10] Finally, orders that add liquidity may be eligible for additional rebates upon execution of orders that originally set a new NBBO [11] as well as executions that qualify for the Exchange's quoting incentive program.[12]

The Exchange is proposing that for executions occurring as part of the Market Opening Procedures, the Exchange will neither charge a fee nor provide a rebate. Specifically, executions in the Market Opening Procedures will not be eligible for any rebate, including the NBBO setter liquidity rebate or the quoting incentive program liquidity rebates. It should be noted, however, that executions in the Market Opening Procedures will be counted in calculations of ADV [13] and TCV [14] for purposes of calculating other rebates and fees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act. Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels to be excessive.

The introduction of pricing for the Market Opening Procedures, as described above and proposed by this filing, is intended to allow the Exchange to begin allowing executions to occur as part of the Market Opening Procedures without charging any fees or providing any rebates for such executions. The Exchange believes that this is a reasonable, fair and equitable approach to pricing, particularly because the Exchange does not have any specific advanced knowledge of how market participants will react to the introduction of the Market Opening Procedures. Further, the Exchange believes that the proposal is reasonable because a high level of fees for executions occurring in the Market Opening Procedures would discourage participants from entering orders to participate in the Market Opening Procedures. In addition, the Exchange believes that this structure is a fair and equitable approach to pricing because it provides certainty for market participants with respect to execution costs across all trades occurring as part of the Market Opening Procedures. Lastly, the Exchange also believes that the proposed pricing for executions occurring as part of the Market Opening Procedures is non-discriminatory because it will apply equally to all Members.

The Exchange notes that this proposal is not increasing fees or decreasing rebates for any products traded on or routed by BATS Options, but rather, the proposal only proposes to introduce a pricing structure for executions occurring as part of the Market Opening Procedures.

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

[6] *See* Securities Exchange Act Release No. 71651 (March 5, 2014), (SR–BATS–2014–003) (proposal to modify the BATS Options Opening Process, which was approved on March 5, 2014).

[7] The term ''Professional'' is defined in Exchange Rule 16.1 to mean any person or entity that (A) is not a broker or dealer in securities, and (B) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[8] As defined on the Exchange's fee schedule, the terms ''Firm'' and ''Market Maker'' apply to any transaction identified by a member for clearing in the Firm or Market Maker range, respectively, at the Options Clearing Corporation (''OCC'').

[9] As defined on the Exchange's fee schedule, a ''Customer order'' refers to an order identified by a Member for clearing in the Customer range at the OCC, excluding any transaction for a ''Professional'' as defined in Exchange Rule 16.1.

[10] Mini Options are options that overlie 10 equity or ETF shares, rather than the standard 100 shares. *See* Securities Exchange Act Release No. 69018 (March 1, 2013), 78 FR 15090 (March 8, 2013) (notice of filing and immediate effectiveness allowing Mini Options to be listed and traded on BATS Options) (SR–BATS–2013–013).

[11] As defined in Exchange Rule 27.1(11), the term ''NBBO'' is defined to mean the national best bid and offer in an option series as calculated by an Eligible Exchange.

[12] *See* Securities Exchange Act Release No. 69079 (March 8, 2013), 78 FR 16306 (March 14, 2013) (SR–BATS–2013–017) (notice of filing and immediate effectiveness of proposed rule change related to fees for use of BATS Options).

[13] As defined on the Exchange's fee schedule, ADV means average daily volume calculated as the number of contracts added or removed, combined, per day on a monthly basis; routed contracts are not included in ADV calculation; with prior notice to the Exchange, a Member may aggregate ADV with other Members that control, are controlled by, or are under common control with such Member.

[14] As defined on the Exchange's fee schedule, TCV means total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan for the month for which the fees apply.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange notes that this rule change is being proposed as a competitive offering at a time when many other options exchanges are already offering similar processes for opening their respective markets. As a result of the competitive environment, market participants will have various pricing and execution models to choose from in making determinations on where to enter orders prior to the opening of trading in a series of options. As stated above, the Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels to be excessive.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has 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 foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and paragraph (f) of Rule 19b–4 thereunder.[16] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2014–006 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–BATS–2014–006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2014–006 and should be submitted on or before April 15, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–06460 Filed 3–24–14; 8:45 am]

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[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71751; File No. SR–OCC–2014–04]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Administrative and Conforming Changes To Rename the Membership/Risk Committee to Risk Committee, Reflect the Renaming of the Chairman Title to Executive Chairman, and Reflect That Two Management Directors Are on the Board of Directors

March 19, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on March 6, 2014, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A) [3] of the Act and Rule 19b–4(f)(3) [4] thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

OCC proposes to amend its By-Laws and Rules (collectively, ''Rules'') to make administrative and/or conforming rule changes to reflect a proposal that (i) the ''Membership/Risk Committee'' would be renamed to ''Risk Committee,'' (ii) the title of ''Chairman'' has been replaced with the title of ''Executive Chairman'' and, (iii) two Management Directors are members of OCC's Board of Directors (''Board'').[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(3).

[5] OCC filed, and the Commission approved, a proposed rule change concerning the creation of the role of Executive Chairman. *See* Securities Exchange Act Release No. 70076 (July 30, 2013), 78 FR 47449 (August 5, 2013), (SR–OCC–2013–09). As part of SR–OCC–2013–09, OCC (1) separated the powers and duties previously combined in the office of Chairman into two offices, Executive Chairman and President; and (2) provided that the President, by virtue of such office, would be a Management Director. As a result, effective January 1, 2014, two Management Directors (i.e., the Executive Chairman and the President) are on the Board and the Board increased in size by one member to a total of 19 directors.

OCC also proposes to make conforming amendments to reflect the renaming of the Membership/Risk Committee and the current title of Executive Chairman, as applicable, to the following documents: The Membership/Risk Committee Charter (''RC Charter''), the Performance Committee Charter (''PC Charter'') and the Charter of OCC's Board of Directors (''Board Charter'') as well as the Fitness Standards for Directors, Clearing Members and Others (''Fitness Standards'') attached thereto.[6] Additional conforming amendments are being made to the RC Charter, the PC Charter and the Board Charter (including the Fitness Standards) to further reflect the governance changes described in footnote 5.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

As discussed below, the purpose of this rule filing is to make administrative and/or conforming amendments to the Rules and to the charters of the Board and certain of its committees. These technical amendments reflect that: (1) The Membership/Risk Committee of the Board is proposed to be renamed to the Risk Committee; (2) the title of ''Executive Chairman'' has replaced the title of ''Chairman;'' and (3) two Management Directors are members of the Board. Other conforming amendments are proposed as well.

Risk Committee Name Change

OCC's Membership/Risk Committee is a committee of OCC's Board. The purpose of this committee, as stated in its charter, is to assist the Board in overseeing OCC's policies and processes for identifying and addressing strategic, operational and financial risks. OCC believes that the name ''Risk Committee'' more accurately reflects this purpose and is more commonly used for this type of committee by other organizations in the financial industry. The role the committee plays in assisting the Board in fulfilling its responsibilities, as described in OCC's Rules and the RC Charter, as well as the specific policies and procedures governing the membership and organization, scope of authority and specific functions and responsibilities of the committee has not changed. Accordingly, OCC proposes that existing references to Membership/Risk Committee would be replaced with Risk Committee in its Rules, the RC Charter and Board Charter (including the Fitness Standards).

Executive Chairman Name Change; Number of Management Directors

On January 1, 2014, OCC implemented an approved change in its governance structure that: (1) Split the role of Chairman into two offices, the Executive Chairman and President; and (2) provided that the President, by virtue of election to that office, became a Management Director.[7] OCC's Rules and the charters of the Board (including the Fitness Standards) and certain of its committees contain numerous references to the term ''Chairman.'' [8] OCC proposes to replace existing references to Chairman with Executive Chairman in its Rules, the RC Charter, the PC Charter and the Board Charter (including the Fitness Standards). In connection with making such updates, OCC identified instances in which additional conforming changes to the Rules and charters of the Board and certain of its committees were necessary to reflect that there are now two Management Directors serving on OCC's Board.[9] (As defined in OCC's By-Laws, the Executive Chairman and the President both are Management Directors.) The division of responsibility between the Executive Chairman and the President, as set forth in the By-Laws, is not affected by any of the proposed changes, which OCC believes increases the transparency of its governance arrangements by appropriately reflecting the title of the Executive Chairman and the number of Management Directors on its Board.

(2) Statutory Basis

OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act [10] because it will help ensure that OCC's governance structure is designed to protect investors and the public interest. The name ''Risk Committee'' more accurately reflects the role and function of the Membership/Risk Committee and the title ''Executive Chairman'' more accurately reflects OCC's current governance structure. All other changes are made for comparable reasons. The proposed, administrative, rule change will promote, as required under Rule 17Ad–22(d)(8), a clear and transparent governance structure that will fulfill the public interests requirements in Section 17A of the Act, support the objectives of OCC's owners and participants, and promote the effectiveness of OCC's risk management procedures.[11] The proposed rule change will also ensure that OCC's Rules, the RC Charter, the PC Charter and the Board Charter (including the Fitness Standards) remain accurate. The proposed rule change is not inconsistent with any rules of OCC, including those proposed to be amended.

(B) Clearing Agency's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[12] This proposed rule change will help ensure that OCC meets regulatory requirements that it has a clear and transparent governance structure by updating its Rules to reflect the adoption of a name for the Membership/Risk Committee that more accurately reflects its role and function at OCC as well as update OCC's Rules to reflect its current governance structure. To the extent OCC's clearing members are affected by the proposed rule change, OCC believes that, by adopting a more descriptive name for the Membership/Risk Committee and updating OCC's Rules to reflect is current governance structure, all of its participants will have greater certainty concerning OCC's governance

[6] OCC filed, and the Commission approved, certain clarifying amendments to the RC Charter and the PC Charter. *See* Securities Exchange Act Release No. 71627 (February 27, 2014), 79 FR 12538 (March 5, 2014), (SR–OCC–2014–01). The RC Charter, PC Charter and Board Charter were initially approved by the Commission on December 6, 2013. *See* Securities Exchange Act Release No. 71022 (December 6, 2013), 78 FR 75659 (December 12, 2013), (SR–OCC–2013–17).

[7] *See supra* note 5.

[8] These provisions typically define the Chairman's authority to take certain actions in certain circumstances. For example, Article III, Section 14 of OCC's By-Laws provides the Chairman with authority to call special Board meetings and OCC Rule 505 provides that the Chairman can extend the times that OCC is obligated to pay settlement amounts to clearing members.

[9] *Supra* note 5. The proposed changes to OCC By-Laws Article VIIA, Section 3 will correct an administrative oversight in filing SR–OCC–2013–09.

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] 17 CFR 240.17Ad–22(d)(8).

[12] 15 U.S.C. 78q–1(b)(3)(I).

arrangements and that such clarifications will facilitate the prompt and accurate settlement of securities transactions because OCC's Rules will be more accurate, transparent and readable. Accordingly, OCC 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.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(3) [14] thereunder, the proposed rule change is filed for immediate effectiveness as it solely concerns the administration of OCC. As described above, both the proposal to rename the Membership/Risk Committee to ''Risk Committee'' as well as the proposal to update OCC's Rules to reflect the title of Executive Chairman and the number of Management Directors on its Board are administrative in nature. Notwithstanding the foregoing, implementation of this rule change will be delayed until this rule change is deemed certified under CFTC Regulation § 40.6. At any time within 60 days of the filing of such 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.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–OCC–2014–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2014–04. 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 of submission. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_14_04.pdf.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–OCC–2014–04 and should be submitted on or before April 15, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–06464 Filed 3–24–14; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(3).

[15] 15 U.S.C. 78s(b)(3)(C).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71750; File No. SR–NYSEArca–2014–24]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Expanding the Short-Term Option Series Program

March 19, 2014.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 13, 2014, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes several amendments to expand the short-term option series (''STOS'') program. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes several amendments to expand the STOS Program (the ''Proposal'') to harmonize

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

the Exchange's rules with recently approved changes to the rules governing short-term options series programs of other options exchanges. The proposed changes are discussed separately below in order to align them with the recently approved filings by the other exchanges. The Exchange believes that this Proposal would enable the Exchange to compete equally and fairly with other options exchanges in satisfying high market demand for weekly options and continuing strong customer demand to use STOS to execute hedging and trading strategies, particularly in the current fast and volatile investing environment.

Part I of the Proposal

Under Part I of the Proposal, the Exchange proposes to make two changes to current Commentary .07 to Rule 6.4, which codifies the STOS Program for non-index options, including equity, currency, and exchange-traded funds (''ETFs''), as follows: (i) To allow the Exchange to list options in the STOS Program on each of the next five Fridays that are business days and are not Fridays in which monthly options series or quarterly options series expire (''Short Term Option Expiration Dates'') at one time; and (ii) to state that additional series of STOS may be listed up to, and including on, the day of expiration. These proposed rule changes are substantially identical to a recently approved filing by the Chicago Board of Options (''CBOE'') and a copycat filing for immediate effectiveness by the International Securities Exchange (''ISE''), except that, unlike the CBOE and ISE filings, the Exchange does not propose to amend rules relating to its STOS Program for index options but only those rules relating to non-index options.[4]

Under current Commentary .07(a), a Short-Term Option Series is a series of an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Thursday or Friday that is a business day and that expires at the close of business on the next Friday that is a business day.[5] If a Thursday or Friday is not a business day, the series may be opened on the first business day immediately prior to that Thursday or Friday; and, if a Friday is not a business day, the series shall expire on the first business day immediately prior to that Friday.[6] The Exchange, however, may only list STOS ''on each of the next five consecutive Fridays that are business days'' and no STOS may expire in the same week in which a monthly or quarterly option series in the same class expires.[7] Thus, because a Friday expiration may coincide with an existing expiration of a monthly or quarterly series of an option in the same class as the STOS option series, the current requirement that the Fridays be consecutive may mean that the Exchange cannot open five STOS expiration dates because of existing monthly or quarterly expirations.

The Exchange proposes to amend Commentary .07(a) to Rule 6.4 to remove the requirement that the five expiration dates be on consecutive Fridays, and instead provide that the Exchange would have the ability to list a total of five STOS expirations at the same time, provided that the expirations are on ''each of the next five Fridays'' that do not include a monthly or quarterly options expiration date.[8] As proposed, the Exchange would list each of the five STOS as close to the STOS opening date as possible so that the next five STOS may be listed at one time, not including the monthly or quarterly options. For example, if a class of options has five STOS listed with expiration dates in July, the other two listed expiration dates may not be in December. The Exchange believes that allowing otherwise would undermine the purpose of the STOS Program. For example, consider a scenario in which a quarterly option expires week 1 and a monthly option expires week 4 from now. As proposed, the Exchange could list a new STOS with the following expiration: Week 1 quarterly option, week 2 STOS option, week 3 STOS option, week 4 monthly option, week 5 STOS option, week 6 STOS option, and week 7 STOS option.[9] As another example, if a quarterly option expires week 3 and a monthly option expires week 6, the following expirations would be allowed: Week 1 STOS option, week 2 STOS option, week 3 quarterly option, week 4 STOS option, week 5 STOS option, week 6 monthly option, week 7 STOS option.

The second change that the Exchange proposes to make under Part I of the Proposal is to codify an existing practice by adding language to Commentary .07(d) to Rule 6.4 to state that additional STOS may be added up to, and including on, the expiration date of the series. As discussed under Part II of the Proposal below, the Exchange rules specify the number of initial and additional series that the Exchange may open for each option class that participates in the STOS Program.[10] While the Exchange rules are silent on when series may be added, in practice, the Exchange, along with the other exchanges, list additional series up to, and on, the expiration day.[11] Consistent with the actions taken by other options exchanges, the Exchange believes that codifying this practice will clarify authority that is not currently explicitly stated in its rules to add series up until the day of expiration.[12] Given the short lifespan of STOS, the Exchange believes that the ability to list new series of options intraday is appropriate.[13]

As noted above, Part I of this Proposal is consistent with the recently approved filing and current practices of other options exchanges, except that the Exchange's Proposal is limited to amending rules relating to its STOS Program for non-index options and does not include rules relating to index options.[14] The Exchange believes that this Proposal would enable the Exchange to compete equally and fairly with other options exchanges in satisfying high market demand for weekly options and continuing strong customer demand to use STOS to execute hedging and trading strategies, particularly in the current fast and volatile investing environment.

Part II of the Proposal

Part II of the Proposal seeks to further expand the STOS Program by making additional amendments to Commentary .07 to Rule 6.4. Specifically, the Exchange is proposing to: (1) Expand the number of classes on which STOS may be opened in accordance with its STOS Program from 30 to 50; (2) modify the initial listing provision to allow the Exchange to open up to 30 STOS for

[4] *See* Securities and Exchange Act Release No. 71005 (December 6, 2013), 78 FR 75395 (December 11, 2013) (SR–CBOE–2013–096) (approval order); Securities and Exchange Act Release No. 71033 (December 11, 2013), 78 FR 76375 (December 17, 2013) (SR–ISE–2013–68). For STOS Program Rules regarding index options, *see* Rule 5.19; Rule 5.10(b)(24).

[5] *See* Commentary .07(a) to Rule 6.4.

[6] *Id.*

[7] *Id.*

[8] *See* proposed Commentary .07(a) to Rule 6.4.

[9] The Proposal would not allow, for example, for nothing to be listed week 7 but in week 8, a STOS option.

[10] *See* Commentary .07(c) and (d) to Rule 6.4.

[11] The Exchange notes that the Options Clearing Corporation (''OCC'') has the ability to accommodate series in the STOS Program intraday.

[12] *See supra* n.4.

[13] The Exchange is also proposing to add language to Commentary .07(d) stating that this provision is designed to eliminate any confusion about when additional series may be added in the STOS Program in comparison to other Exchange listing programs. Specifically, the Exchange proposes to add language stating that ''Notwithstanding any other provisions in this Rule 6.4, Short Term Option Series may be added up to and including on the Short Term Expiration Date for that option series.''

[14] *See supra* n.4.

each expiration date in a STOS class; (3) expand the strike price range limitations for STOS; and (4) allow the Exchange to list STOSs at a strike price interval of $2.50 or greater where the strike price is above $150. These proposed changes are substantially identical to a recently approved filing by NASDAQ OMX PHLX, LLC (''PHLX'') and copycat filings for immediate effectiveness by the CBOE and ISE, unless otherwise noted herein.[15]

Current Commentary .07(b) to Rule 6.4 states that after an equity option class has been approved for listing and trading on the Exchange, the Exchange may open no more than thirty option classes.[16] In addition to the thirty-option class limitation, there is also a limitation that no more than twenty initial series may be opened for trading; provided, however, that the Exchange may open up to ten additional series when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened.[17] The same number of strike prices must be opened above and below the value of the underlying security at about the time that the STOS are initially opened for trading on the Exchange.[18] Furthermore, under the current rule, the strike price of each STOS currently has to be fixed with approximately the same number of strike prices being opened above and below the value of the underlying security at about the time that the STOS are initially opened for trading on the Exchange, and with strike prices being within thirty percent (30%) above or below the closing price of the underlying security from the preceding day.[19]

In terms of strike price intervals, the STOS Program currently allows the interval between strike prices on STOS to be (i) $0.50 or greater where the strike prices is less than $75, and $1 or greater where the strike price is between $75 and $150 for all classes that participate in the STOS Program.[20] In addition, during a market move such that no series are at least 10% above or below the current price of the underlying security and all existing series have open interest, the Exchange may also open additional series in excess of the thirty-strike limitation that are between 10% and 30% of the price of the underlying security.[21] Finally, in the event that the underlying security has moved such that there are no series that are at least 10% above or below the current prices of the underlying security, the Exchange will delist any series with no open interest so as to list series that are at least 10% but not more than 30% above or below the current price of the underlying security.[22]

The Exchange proposes to expand the STOS Program as the Exchange believes an expansion will benefit the marketplace while aligning the Exchange with currently proposed expansions by other options exchanges.[23]

First, the Exchange is proposing to increase the number of STOS classes that may be opened after an option class has been approved for listing and trading on the Exchange. The Exchange proposes to amend Commentary .07(b) to Rule 6.4 so that the Exchange may select up to fifty currently listed option classes on which STOS may be opened. The Exchange also proposes to amend Commentary .07(c) to Rule 6.4 so that the Exchange may open up to 30 series of STOS for each expiration date in that class.

Second, the Exchange proposes to amend Commentary .07(c) and (d) to Rule 6.4 to indicate that any initial or additional strike prices listed by the Exchange shall be reasonably close to the price of the underlying equity security and within the following parameters: (i) If the price of the underlying security is less than or equal to $20, strike prices shall be not more than one hundred percent (100%) above or below the price of the underlying security; and (ii) if the price of the underlying security is greater than $20, strike prices shall be not more than fifty percent (50%) above or below the price of the underlying security.[24]

The Exchange is also proposing to amend Commentary .07(d) to Rule 6.4 to indicate that the Exchange may open additional strike prices of STOS that are no more than 50% above or below the current value of the underlying security (if the price is greater than $20); provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market-Makers trading for their own account shall not be considered when determining customer interest under this provision. The Exchange notes that this aspect of Part II of the Proposal differs from the recently amended rules of other exchanges, which permit those exchanges to open additional strike prices for STOS that are more than 50% above or below the current price of the underlying security if the price of the underlying security is greater than $20.00.[25] However, the Exchange believes that its proposed amendment is consistent with the process for adding new series of options found in subsection 3(g)(i) of the Options Listing Procedures Plan (''OLPP''), which is codified in Rule 6.4A. Specifically, Rule 6.4A(b)(i) provides that an option series price has to be reasonably close to the price of the underlying security and must not exceed a maximum of 50% or 100%, depending on the price, from the underlying security. The rule further provides that if the price of the underlying security is greater than $20, the Exchange shall not list new option series with an exercise price more than 50% above or below the price of the underlying security. The Exchange believes that its proposed amendment to Commentary .07(d) to Rule 6.4 is aligned with OLPP procedures, as codified in Rule 6.4A(b)(i). Moreover, the Exchange believes that its proposed amendment is a reasonable enhancement to the STOS Program in that it harmonizes the Program internally by adopting consistent parameters for opening STOS and listing additional strike prices.

Next, the Exchange proposes to simplify the delisting language in Commentary .07(d) to Rule 6.4 by removing the current range methodology that states, in part, that the Exchange will delist certain series ''so as to list series that are at least 10% but

[15] *See* Securities Exchange Act Release No. 70682 (October 15, 2013), 78 FR 62809 (October 22, 2013) (SR–PHLX–2013–101) (notice of filing); Securities Exchange Act Release No. 71004 (December 6, 2013), 78 FR 75437 (December 11, 2013) (approval order); Securities and Exchange Act Release No. 71079 (December 16, 2013), 78 FR 77188 (December 20, 2013) (SR–CBOE–2013–121); Securities and Exchange Act Release No. 71034 (December 11, 2013), 78 FR 76363 (December 17, 2013) (SR–ISE–2013–69). Consistent with these filings, the Exchange is only proposing to amend the STOS Program for equity options, but notes that the number of classes that may participate in the STOS Program is aggregated between equity options and index options and is not apportioned between equity options and index options. Unlike the CBOE filing, however, the Exchange does not propose any conforming changes to rules relating its STOS Program for index options.

[16] *See* Rule 6.4(b). The increase in the number of option issues that could be opened pursuant to the STOS Program went into effect in August 2013. *See* Securities Exchange Act Release No. 34–70168 (August 13, 2013) (SR–NYSEArca–2013–79), 78 FR 50469 (August 19, 2013).

[17] *See* Commentary .07(b), (c) and (d) to Rule 6.4.

[18] *Id.*

[19] *Id.*

[20] *See* Commentary .07(e) to Rule 6.4.

[21] *See* Commentary .07(d) to Rule 6.4.

[22] *See id.*

[23] *See supra* n. 15.

[24] The price of the underlying security is calculated in accordance with Rule 6.4A.

[25] *See* PHLX Commentary .11(d) of Rule 1012; CBOE 5.5(d)(4); ISE Supplementary Material .02(d) to Rule 504. *See also* PHLX Commentary .10(a) of Rule 1012; CBOE Rule 5.5A; ISE Rule 504A(b)(i).

not more than 30% above or below the current price of the underlying security.'' [26] As proposed, if the underlying security has moved such that there are no series that are at least 10% above or below the current price of the underlying security, the Exchange will continue to delist any series with no open interest in both the call and the put series having a: (i) Strike higher than the highest price with open interest in the put and/or call series for a given expiration week; and (ii) strike lower than the lowest strike price with open interest in the put and/or the call series for a given expiration week. The Exchange notes that new series added after delisting will not be constrained by the prior range methodology. The Exchange believes that, like the other aspects of this Proposal, this proposed amendment will add clarity and certainty to the STOS process on the Exchange.

Finally, the Exchange proposes to add $2.50 strike price intervals to the STOS Program. Specifically, the Exchange proposes to amend Commentary .07(e) to Rule 6.4 to indicate that the interval between strike prices on STOS may be $2.50 or greater where the strike price is above $150. This proposed change complements the current STOS strike price intervals of $0.50 or greater where the strike price is less than $75 (or for STOS classes that trade in one dollar strike intervals), and $1 or greater where the strike price is between $75 and $150 for all classes that participate in the STOS Program. This proposed change would align the Exchange with other options exchanges participating in the STOS Program, while permitting the listing of an additional strike interval for higher priced underlying securities that complements the current intervals.[27]

With regard to the impact of this Proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with the proposed expansion of the STOS Program. While the expansion of the STOS Program is expected to generate additional quote traffic, the Exchange believes that this increased traffic will be manageable. The Exchange also notes that any series added under this expansion would be subject to quote mitigation.[28] Although the number of classes participating in the STOS Program would increase, that increase would be limited, as described above, and consistent with existing, similar programs on other exchanges.[29] Further, the Exchange does not believe that the Proposal will result in a material proliferation of additional series because it is limited to a fixed number of classes.

As noted above, the STOS Program has been very well-received by market participants, in particular by retail investors. There is continuing strong customer demand for having the ability to execute hedging and trading strategies via STOS, particularly in the current fast and volatile multi-faceted trading and investing environment that extends across numerous markets and platforms.[30] The Exchange has been requested by traders and other market participants to expand the STOS Program to allow additional STOS offerings and increased efficiency.[31]

Finally, the Exchange notes that other options exchanges have rules similar to this Proposal and other exchanges will continue to adopt similar rules, which continued expansion of the STOS Program the Exchange believes will serve to promote competition amongst the exchanges. The Exchange believes that the current Proposal will permit the Exchange to meet increased customer demand and provide market participants with the ability to hedge in a greater number of option classes and series.

2. Statutory Basis

The Exchange believes that the Proposal is consistent with Section 6(b) of the Act,[32] in general, and furthers the objectives of Section 6(b)(5),[33] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, 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) [34] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that all of the elements of the Proposal, including allowing for the listing of STOS on each of the next five Fridays that are business days and are not Fridays in which monthly options series or quarterly options series expire at one time, expanding the classes and additional series that can be opened in the STOS Program, simplifying the delisting process, and allowing $2.50 strike price intervals, will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment and hedging decisions in greater number of securities, thus allowing them to better manage their risk exposure. The Exchange believes this Proposal to expand the STOS Program would make the Program more effective, would harmonize the provisions with the OLPP, and would create more clarity in the Exchange's rules to the benefit of investors, market participants and the market in general. For the foregoing reasons, the Exchange also believes that the proposed rule changes are equitable and not unfairly discriminatory as the benefits from the expansion of the STOS Program will be available to all market participants.

With regard to the impact of this Proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with the proposed expansion of the STOS Program. While the expansion of the STOS Program is expected to generate additional quote traffic, the Exchange believes that this increased traffic will be manageable. The Exchange also notes that any series added under this expansion would be subject to quote mitigation.[35] Although the number of classes participating in the STOS Program would increase, that increase would be limited, as described above, and consistent with existing, similar programs on other exchanges.[36] Further, the Exchange does not believe that the Proposal will result in a material proliferation of additional series because it is limited to a fixed number of classes.

[26] *See* Commentary .07(d) to Rule 6.4.

[27] *See supra* n.15.

[28] *See* Commentary .03 to Rule 6.86.

[29] *See supra* nn.4, 15.

[30] These include, without limitation, options, equities, futures, derivatives, indexes, ETFs, exchange traded notes, currencies, and over the counter instruments.

[31] In order that the Exchange not exceed the current thirty option class and twenty initial option series restriction, the Exchange has on occasion had to turn away STOS customers (traders and investors) because it could not list, or had to delist, STOS or could not open adequate STOS series because of restrictions in the STOS Program. This has negatively impacted investors and traders, particularly retail investors, who have continued to request that the Exchange add, or not remove, STOS classes, or have requested that the Exchange expand the STOS Program so that additional STOS classes and series could be opened that would allow the market participants to execute trading and hedging strategies.

[32] 15 U.S.C. 78f(b).

[33] 15 U.S.C. 78f(b)(5).

[34] *Id.*

[35] *See* Commentary .03 to Rule 6.86.

[36] *See supra* nn.4, 15.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the Proposal will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes the Proposal is pro-competitive and will allow the Exchange to compete more effectively with other options exchanges that have already adopted changes to their STOS Programs that are substantially identical to the changes proposed by this filing.[37] The Exchange believes that the Proposal will result in additional investment options and opportunities to achieve the investment objectives of market participants seeking efficient trading and hedging vehicles, to the benefit of investors, market participants, and the marketplace in general.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [38] and Rule 19b–4(f)(6) thereunder.[39]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of this requirement will allow the Exchange to compete with other options exchanges that have expanded their STOS Programs without putting the Exchange at a competitive disadvantage. The Exchange also stated that the proposal would help eliminate investor confusion and promote competition among the options exchanges. For these reasons, the Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest; and will allow the Exchange to remain competitive with other exchanges. Therefore, the Commission designates the proposed rule change to be operative upon filing.[40]

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–NYSEArca–2014–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2014–24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2014–24 and should be submitted on or before April 15, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–06463 Filed 3–24–14; 8:45 am]

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[37] *See supra* nn.4, 15.

[38] 15 U.S.C. 78s(b)(3)(A).

[39] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[40] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[41] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2014–0031]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for extension of a currently approved collection of information.

SUMMARY: This document solicits public comments on continuation of the requirements for the collection of information entitled ''Motorcycle Helmet Labeling'' (OMB Control Number: 2127–0518).

Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

DATES: You should submit your comments early enough to ensure that

Docket Management receives them no later than May 27, 2014.

ADDRESSES: You may submit comments (identified by the DOT Docket ID Number above) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Regardless of how you submit your comments, you should mention the docket number of this document. You may call the Docket at (202) 366–9324. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance number. It is requested, but not required, that two copies of the comment be provided.

Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mr. Check Kam, US. Department of Transportation, NHTSA, 1200 New Jersey Avenue SE., West Building Room W43–451, NVS–113, Washington, DC 20590. Mr. Kam's telephone number is (202) 366–0247 and fax number is (202) 493–2990. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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) 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) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

(1) *Title:* 49 CFR 571.218, Motorcycle Helmets (Labeling).

OMB Number: 2127–0518.

Requested Expiration Date of Approval: Three years from the approval date.

Type of Request: Extension of a currently approved collection.

Affected Public: Motorcycle helmet manufacturers

Summary of the Collection of Information: The National Traffic Vehicle Safety statute at 49 U.S.C. Subchapter II Standards and Compliance, Sections 30111 and 30117, authorizes the issuance of Federal motor vehicle safety standards (FMVSS). The Secretary is authorized to issue, amend, and revoke such rules and regulations as he/she deems necessary. The Secretary is also authorized to require manufacturers to provide information to first purchasers of motor vehicles or motor vehicle equipment when the vehicle equipment is purchased, in the form of printed matter placed in the vehicle or attached to the motor vehicle or motor vehicle equipment.

Using this authority, the agency issued the initial FMVSS No. 218, ''Motorcycle helmets,'' in 1974. Motorcycle helmets are devices used to protect motorcyclists from head injury in motor vehicle accidents. FMVSS No. 218 S5.6 requires that each helmet shall be labeled permanently and legibly in a manner such that the label(s) can be read easily without removing padding or any other permanent part.

Estimated Total Annual Burden: 9,100 hours.

Estimated Number of Respondents: 45.

Comments are invited on: Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50.

Lori K. Summers,

Director, Office of Crashworthiness Standards.

[FR Doc. 2014–06534 Filed 3–24–14; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2013–0161]

Pipeline Safety: Public Workshop on Class Location Methodology

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration (PHMSA) is holding a public workshop along with the National Association of Pipeline Safety Representatives to present perspectives and seek comment on whether applying the gas pipeline integrity management (IM) requirements beyond high consequence areas would mitigate the need for class location requirements. This event is just one action in support of addressing Section 5(a)(2) of the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (Pub. L. 112–90).

DATES: The public workshop will be held on Wednesday, April 16, 2014, from 9:00 a.m. to 4:30 p.m. EST. Written

comments must be received by May 27, 2014.

ADDRESSES: The workshop will be held at the Hilton Crystal City at the Washington Reagan National Airport, 2399 Jefferson Davis Highway, Arlington, Virginia. A small room block is available at the Federal government rate of $224/night for the nights of April 15 and 16 on a first come, first served basis. Hotel reservations can be made under the room block ''United States Department of Transportation'' at 703–418–6800 or at *http://www3.hilton.com/en/hotels/virginia/hilton-crystal-city-at-washington-reagan-national-airport-DCANAHF/index.html*.

Registration: Members of the public may attend this free workshop. To help assure that adequate space and accommodations are provided, all attendees are encouraged to register for the workshop in advance at *http://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=95*. A name tag will be provided from your registration.

Webcast: This public event will also be webcasted in order to facilitate wider reaching and remote attendance. Webcast information will be provided from the event meeting in the hour before the start time at *http://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=95*.

Comments: Members of the public may also submit written comments either before or after the workshop. Comments on this public event should reference Docket No. PHMSA–2013–0161. Comments may be submitted in the following ways:

- *E-Gov Web site: http://www.regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590.

Hand Delivery: DOT Docket Management System, Room W12–140, on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: Identify the docket number at the beginning of your comments. If you submit your comments by mail, submit two copies. If you wish to receive confirmation that PHMSA has received your comments, include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov.*

Note: Comments will be posted without changes or edits to *http://www.regulations.gov* including any personal information provided. Please see the Privacy Act Statement heading below for additional information.

Privacy Act Statement

Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19476).

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, please contact the Hilton Chrystal City at the Washington Reagan National Airport at 703–418–6800 or Robert Smith, PHMSA, Office of Pipeline Safety, at 919–238–4759 or by email at *robert.w.smith@dot.gov*.

FOR FURTHER INFORMATION CONTACT: Robert Smith, PHMSA, Office of Pipeline Safety, at 919–238–4759 or by email at *robert.w.smith@dot.gov*, regarding the subject matter of this notice.

SUPPLEMENTARY INFORMATION: The Pipeline and Hazardous Materials Safety Administration (PHMSA) is holding a public workshop to present and seek comment on whether applying the gas pipeline integrity management (IM) requirements beyond high consequence area would mitigate the need for class location requirements. Locations along gas pipelines are divided into classes from 1 (rural) to 4 (densely populated) and are based upon the number of buildings or dwellings for human occupancy. Allowable pipe operating stresses, as a percentage of specified minimum yield strength, decrease as class location increases from Class 1 to Class 4 locations. Gas IM requirements use a different approach to identify areas of higher risk along pipelines. The workshop will have presentations from PHMSA, state regulatory representatives and other stakeholders on the review of both methodologies, discussion panels, and an overview of comments received from an August 1, 2013, Notice of Inquiry and from an August 25, 2011, Advance Notice of Proposed Rulemaking in Docket No. PHMSA–2011–0023 at *www.regulations.gov*.

The details on this meeting including the location, times and agenda will be available on the meeting page *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=95* as they become available.

Presentations, transcripts and the webcast archive will be available online at the meeting page *http://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=95* within 30 days following the meeting.

Authority: 49 CFR 1.97.

Issued in Washington, DC, on March 19, 2014.

Alan K. Mayberry,

Deputy Associate Administrator for Policy and Programs.

[FR Doc. 2014–06403 Filed 3–24–14; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Neville Peterson LLP on behalf of Trinity Industries, Inc. (WB605–10—3/5/14) for permission to use certain data from the Board's 2012 Carload Waybill Sample. A copy of this request may be obtained from the Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Scott Decker, (202) 245–0348.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2014–06472 Filed 3–24–14; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8582

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C.

3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8582, Passive Activity Loss Limitations.

DATES: Written comments should be received on or before May 27, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie A. Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 317–5746, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Passive Activity Loss Limitations.

OMB Number: 1545–1008.

Form Number: 8582.

Abstract: Under Internal Revenue Code section 469, losses from passive activities, to the extent that they exceed income from passive activities, cannot be deducted against nonpassive income. Form 8582 is used to figure the passive activity loss allowed and the loss to be reported on the tax returns.

Current Actions: There are no major changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and farms.

Estimated Number of Respondents: 2,414,854.

Estimated Time per Respondent: 3 hours, 30 minutes.

Estimated Total Annual Burden Hours: 8,451,989.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 18, 2014.

Christie A. Preston,

IRS, Reports Clearance Officer.

[FR Doc. 2014–06507 Filed 3–24–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–A, Acquisition or Abandonment of Secured Property.

DATES: Written comments should be received on or before May 27, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie A. Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 317–5746, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Acquisition or Abandonment of Secured Property.

OMB Number: 1545–0877.

Form Number: 1099–A.

Abstract: Form 1099–A is used by persons who lend money in connection with a trade or business, and who acquire an interest in the property that is security for the loan or who have reason to know that the property has been abandoned, to report the acquisition or abandonment.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Responses: 1,267,500.

Estimated Time per Response: 9 min.

Estimated Total Annual Burden Hours: 202,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 18, 2014.

Christie A. Preston,

IRS Reports Clearance Officer.

[FR Doc. 2014–06510 Filed 3–24–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2005–62

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2005–62, Modification of Notice 2005–04; Biodiesel and Aviation-Grade Kerosene.

DATES: Written comments should be received on or before May 27, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to LaNita Van Dyke, Internal Revenue Service, Room 6517, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Christie Preston at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Christie.A.Preston@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Modification of Notice 2005–04; Biodiesel and Aviation-Grade Kerosene.

OMB Number: 1545–1915.

Notice Number: Notice 2005–62.

Abstract: This notice modifies Notice 2005–4, 2005–2 I.R.B. 289, as modified by Notice 2005–24, 2005–12 I.R.B. 757, by revising the guidance relating to the Certificate for Biodiesel, which is required as a condition for claiming a credit or payment under §§ 6426(c), 6427(e), and 40A of the Internal Revenue Code. This notice also provides guidance on issues related to the biodiesel credit or payment that are not addressed in Notice 2005–4. This notice further modifies Notice 2005–4 relating to the Certificate of Person Buying Aviation-Grade Kerosene for Commercial Aviation or Nontaxable Use, which is required to notify a position holder of certain transactions under §§ 4081 and 4082. Notice 2005–04 provides guidance on certain excise tax Code provisions that were added or effected by the American Jobs Creation Act of 2004. The information will be used by the IRS to verify that the proper amount of tax is reported, excluded, refunded, or credited.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, farms, Federal, state, local or tribal governments.

Estimated Number of Respondents: 20,263.

Estimated Time per Respondent: 3 hours, 46 minutes.

Estimated Total Annual Burden Hours: 76,190.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 14, 2014.

Christie Preston,

Supervisory Tax Analyst.

[FR Doc. 2014–06508 Filed 3–24–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Public Availability of the Department of Veterans Affairs Fiscal Year (FY) 2013 Service Contract Inventory

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Public Availability of FY 2013 Service Contract Inventory.

SUMMARY: In accordance with section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), the Department of Veterans Affairs (VA) is publishing this notice to advise the public of the availability of the FY 2013 Service Contract Inventory. This inventory provides information on VA service contract actions over $25,000 made in FY 2013. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010, and updated on December 19, 2011, by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventory-guidance.pdf.* VA has posted its inventory and a summary of the inventory on the VA homepage at the following link: *http://www.va.gov/oal/business/pps/scaInventory.asp.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Ms. Sheila Darrell, Deputy Director of Procurement Policy and Warrant Management Service, in the Office of Acquisition and Logistics (OA&L) Policy Division, Department of Veterans Affairs, at 202–632–5288 or email: *sheila.darrell@va.gov.*

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 January 27, 2014, for publication.

Dated: March 19, 2014.

Robert C. McFetridge,

Director of Regulations Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2014–06440 Filed 3–24–14; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 79 Tuesday,
No. 57 March 25, 2014

Part II

Department of Education

34 CFR Parts 600 and 668
Program Integrity: Gainful Employment; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 600 and 668

[Docket ID ED–2014–OPE–0039]

RIN 1840–AD15

Program Integrity: Gainful Employment

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations on institutional eligibility under the Higher Education Act of 1965, as amended (HEA), and the Student Assistance General Provisions to establish measures for determining whether certain postsecondary educational programs prepare students for gainful employment in a recognized occupation, and the conditions under which these educational programs remain eligible under the Federal Student Aid programs authorized under title IV of the HEA (title IV, HEA programs).

DATES: We must receive your comments on or before May 27, 2014.

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 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.

- *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:* The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments about the proposed regulations, address them to Ashley Higgins, U.S. Department of Education, 1990 K Street NW., room 8037, Washington, DC 20006–8502.

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 Kolotos, U.S. Department of Education, 1990 K Street NW., Room 8018, Washington, DC 20006–8502. Telephone: (202) 502–7762 or by email: *gainfulemploymentregulations@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: As discussed in more detail under ''§ 668.401 Scope and purpose,'' the proposed regulations are intended to address growing concerns about educational programs that, as a condition of eligibility for title IV, HEA program funds, are required by statute to provide training that prepares students for gainful employment in a recognized occupation (GE programs), but instead are leaving students with unaffordable levels of loan debt in relation to their earnings, or leading to default. GE programs include nearly all educational programs at for-profit institutions of higher education, as well as non-degree programs at public and private non-profit institutions such as community colleges.

Specifically, the Department is concerned that a number of GE programs: (1) Do not train students in the skills they need to obtain and maintain jobs in the occupation for which the program purports to provide training, (2) provide training for an occupation for which low wages do not justify program costs, and (3) are experiencing a high number of withdrawals or ''churn'' because relatively large numbers of students enroll but few, or none, complete the program, which can often lead to default. We are also concerned about the growing evidence, from Federal and State investigations and *qui tam* lawsuits, that many GE programs are engaging in aggressive and deceptive marketing and recruiting practices. As a result of these practices, prospective students and their families are potentially being pressured and misled into critical decisions regarding their educational investments that are against their interests.

For these reasons, through this regulatory action, the Department seeks to establish: (1) An accountability framework for GE programs that will define what it means to prepare students for gainful employment in a recognized occupation by establishing measures by which the Department would evaluate whether a GE program remains eligible for title IV, HEA program funds, and (2) a transparency framework that would increase the quality and availability of information about the outcomes of students enrolled in GE programs. Better outcomes information would benefit: students, prospective students, and their families, as they make critical decisions about their educational investments; the public, taxpayers, and the Government, by providing information that would enable better protection of the Federal investment in these programs; and institutions, by providing them with meaningful information that they could use to help improve student outcomes in their programs.

The accountability framework is designed to define what it means to prepare students for gainful employment by establishing measures that would assess whether programs provide quality education and training to their students that lead to earnings that will allow students to pay back their student loan debts. For programs that perform poorly under the measures, institutions would need to make improvements in the initial years of the rule, or lose program eligibility for title IV, HEA program funds. For programs that are not among the very worst, but nonetheless do not have outcomes that meet minimum acceptable levels of performance, institutions would be required to make improvements after the regulations become effective to avoid losing eligibility, but would be given a relatively greater amount of time to do so.

The transparency framework is designed to establish reporting and disclosure requirements that would increase the transparency of student outcomes of GE programs so that information is disseminated to students, prospective students, and their families that is accurate and comparable and could help them make better informed decisions about where to invest their time and money in pursuit of a postsecondary degree or credential. Further, this information would provide the public, taxpayers, and the Government with relevant information to better safeguard the Federal investment in these programs. Finally, the transparency framework would provide institutions with meaningful information that they could use to improve student outcomes in these programs.

Authority for This Regulatory Action:

To accomplish these two primary goals of accountability and transparency, the Secretary proposes to amend parts 600 and 668 of title 34 of the Code of Federal Regulations (CFR).

The Department's authority for this regulatory action is derived primarily from three sources, which are discussed in more detail in ''§ 668.401 Scope and purpose'' and ''§ 668.403 Gainful employment framework.'' First, sections 101 and 102 of the HEA define an eligible institution, as pertinent here, as one that provides an ''eligible program of training to prepare students for gainful employment in a recognized occupation.'' 20 U.S.C. 1001(b)(1), 1002(b)(1)(A)(i), (c)(1)(A). Section 481(b) of the HEA defines ''eligible program'' to include a program that ''provides a program of training to prepare students for gainful employment in a recognized profession.'' 20 U.S.C. 1088(b). Briefly, this authority establishes the requirement that the educational programs that are eligible for title IV, HEA program funds under these sections must provide training to prepare students for gainful employment in a recognized occupation—the requirement that the Department seeks to define through the proposed regulations.

Second, section 410 of the General Education Provisions Act provides the Secretary with authority to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operations of, and governing the applicable programs administered by, the Department. 20 U.S.C. 1221e-3. Furthermore, under section 414 of the Department of Education Organization Act, the Secretary is authorized to prescribe such rules and regulations as the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department. 20 U.S.C. 3474. These authorities thus include promulgating regulations that, in this case: set measures to determine the eligibility of GE programs for title IV, HEA program funds; require institutions to report information about the program to the Secretary; and require the institution to disclose information about the program to students, prospective students, and their families, the public, taxpayers, and the Government, and institutions.

As also explained in more detail in ''§ 668.401 Scope and purpose,'' the Department's authority for the transparency framework is further supported by section 431 of the Department of Education Organization Act, which provides authority to the Secretary, in relevant part, to inform the public regarding federally supported education programs; and collect data and information on applicable programs for the purpose of obtaining objective measurements of the effectiveness of such programs in achieving the intended purposes of such programs. 20 U.S.C. 1231a.

The Department's authority for the proposed regulations is also informed by the legislative history of these provisions, as discussed in ''§ 668.403 Gainful employment framework,'' as well as the rulings of the U.S. District Court for the District of Columbia in *Association of Private Sector Colleges and Universities* v. *Duncan,* 870 F.Supp.2d 133 (D.D.C. 2012), and 930 F.Supp.2d 210 (D.D.C. 2013). Notably, the court specifically considered the Department's authority to define what it means to prepare students for gainful employment and to require institutions to report and disclose relevant information about their GE programs.

Summary of the Major Provisions of This Regulatory Action:

As discussed under ''Purpose of This Regulatory Action,'' the proposed regulations would establish an accountability framework and a transparency framework.

The accountability framework would, among other things, create a certification process by which an institution would establish a GE program's eligibility for title IV, HEA program funds, as well as a process by which the Department would determine whether a program remains eligible. First, an institution would establish the eligibility of a GE program by certifying that the program is included in the institution's accreditation and satisfies any applicable State or Federal program-level accrediting and licensing requirements for the occupations for which the program purports to prepare students to enter. This requirement would serve as a baseline protection against the harm that students could experience by enrolling in programs that do not meet all State or Federal accrediting standards and licensing requirements necessary to secure the jobs associated with the training.

Under the accountability framework, we also propose two complementary yet independent measures—the debt-to-earnings (D/E) rates measure and the program cohort default rate (pCDR) measure—that would be used to determine whether a GE program remains eligible for title IV, HEA program funds.

The D/E rates measure would evaluate the amount of debt students who completed a GE program incurred to attend that program in comparison to those same students' discretionary and annual earnings after completing the program. The proposed regulations would establish the standards by which the program would be assessed to determine, for each year rates are calculated, whether it passes or fails the D/E rates measure or is ''in the zone.'' Under the proposed regulations, to pass the D/E rates measure, the GE program must have a discretionary income rate less than or equal to 20 percent or an annual earnings rate less than or equal to 8 percent. The proposed regulations would also establish a zone for GE programs that have a discretionary income rate between 20 percent and 30 percent or an annual earnings rate between 8 percent and 12 percent. GE programs with a discretionary income rate over 30 percent and an annual earnings rate over 12 percent would fail the D/E rates measure. Under the proposed regulations, a GE program would become ineligible for title IV, HEA program funds, if it fails the D/E rates measure for two out of three consecutive years, or has a combination of D/E rates measures that are in the zone or failing for four consecutive years. We propose the D/E rates measure and the thresholds, as explained in more detail in ''§ 668.403 Gainful employment framework,'' to assess whether a GE program has indeed prepared students to earn enough to repay their loans, or was sufficiently low cost, such that students are not unduly burdened with debt, and to better safeguard the Federal investment in the program.

In addition to the D/E rates measure, the proposed regulations would establish a pCDR measure. The pCDR measure would evaluate the default rate of former students enrolled in a GE program, regardless of whether they completed the program. Under the proposed regulations, a program would lose eligibility if its GE program has a pCDR of 30 percent or greater for three consecutive fiscal years. We propose the pCDR measure and the thresholds, as explained in more detail in ''§ 668.403 Gainful employment framework,'' to identify those programs that may pass, or may not be evaluated by, the D/E rates measure, but whose students incur debt they cannot repay and ultimately default on their loans. Unlike the D/E rates measure, the pCDR measure would include students who did not complete their programs and therefore could disqualify programs with low completion rates that, regardless of the earnings of students who complete the program, leave a significant number of students without credentials and with unmanageable debt.

The proposed regulations would also establish procedures for the calculation of the D/E rates and pCDR measures, as well as a process for challenging the information used to calculate the D/E rates and pCDR measures and appealing

those determinations. For the D/E rates measure, the proposed regulations also would establish a transition period for the first four years of the rule to allow institutions an opportunity to pass the D/E rates measure by taking immediate steps to improve otherwise failing GE programs by reducing the loan debt of currently enrolled students.

For a GE program that could become ineligible in an immediately succeeding year, based on the program's performance in prior years, the proposed regulations would require the GE program to warn students and prospective students of the potential loss of eligibility for title IV, HEA program funds, as well as the implications of such loss. Specifically, institutions would be required to provide written warnings to students that describe the options available to continue their education at the institution, or at another institution, in the event that the program loses its eligibility and whether the students will be able to receive a refund of tuition and fees. The proposed regulations also provide that, for a GE program that loses eligibility for title IV, HEA program funds, as well as any failing or zone program that is discontinued by the institution, the loss of eligibility is for three calendar years.

Through these provisions, we intend to: Ensure that, in the initial few years after the proposed regulations become effective, institutions would have a meaningful opportunity and reasonable time to improve their programs and to ensure that those improvements would be reflected in the D/E rates; protect students and prospective students and ensure that they are informed about programs that are failing or could potentially lose eligibility; and provide institutions and other interested parties with clarity as to how the calculations would be made, the opportunities institutions would have to ensure the information used in the calculations is accurate, and the consequences of failing a measure and losing eligibility.

In addition to the accountability framework, the proposed regulations would establish a transparency framework. First, the proposed regulations would establish reporting requirements, under which institutions would report information related to their GE programs to the Secretary. The reporting requirements would both facilitate the Department's evaluation of the GE programs under the accountability framework, as well as support the goals of the transparency framework. Second, the proposed regulations would require institutions to disclose relevant information and data about the GE programs through a disclosure template developed by the Secretary. The proposed disclosure requirements would help ensure students, prospective students, and their families, the public, taxpayers, and the Government, and institutions have access to meaningful and comparable information related to student outcomes and overall performance of GE programs.

Costs and Benefits:

There would be two primary benefits of the proposed regulations. Because the proposed regulations would establish an accountability framework that assesses program performance we would expect students, prospective students, taxpayers, and the Federal Government to receive a better return on money spent on education. The proposed regulations would also establish a transparency framework designed to improve market information that would assist students, prospective students, and their families in making critical decisions about their educational investment and in understanding potential outcomes of that investment. The public, taxpayers, the Government, and institutions would also gain relevant and useful information about GE programs, allowing them to better evaluate their investment in these programs. Institutions would largely bear the costs of the proposed regulations, which would fall into two categories: paperwork costs associated with institutions complying with the proposed regulations, and other costs that could be incurred by institutions if they attempt to improve their GE programs and due to changing student enrollment. In addition, if programs that provided valuable education to students shut down as a result of the proposed regulations, then the foregone value of that service would be another cost to society. See ''Discussion of Costs, Benefits, and Transfers'' in the regulatory impact analysis in Appendix A to this document for a more complete discussion of the costs and benefits of the proposed regulations.

Invitation to Comment: We invite you to submit comments regarding the 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 provide relevant information and data whenever possible, even when there is no specific solicitation of data and other supporting materials in the request for comment. Please do not submit comments outside the scope of the specific proposals in this notice of proposed rulemaking. We will not respond to comments that do not specifically relate to the proposed regulations. See ''**ADDRESSES**'' for instructions on how to submit comments.

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 the 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 the proposed regulations by accessing Regulations.gov. You may also inspect the comments in person in room 8037, 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. If you want to schedule time to inspect comments, 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 the 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 of the Proposed Regulations, Public Participation, and Negotiated Rulemaking

Background

The Secretary proposes to amend parts 600 and 668 of title 34 of the CFR. The regulations in 34 CFR part 600 and 668 pertain to institutional eligibility under the HEA and participation in title IV, HEA programs. We propose these amendments to establish measures for determining whether certain postsecondary educational programs prepare students for gainful employment in a recognized occupation and the conditions under which these educational programs remain eligible under the title IV, HEA programs.

Negotiated Rulemaking Requirement

Section 492 of the HEA, 20 U.S.C. 1098a, 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 proposed regulations. After obtaining advice and recommendations from the public, including individuals and representatives of groups involved in the title IV, HEA programs, the Secretary must subject the proposed regulations to a negotiated rulemaking process. If negotiators reach consensus on the proposed regulations, the Department agrees to publish without alteration a defined group of regulations on which the negotiators reached consensus unless the Secretary reopens the process or provides a written explanation to the participants stating why the Secretary has decided to depart from the agreement reached during negotiations. Further information on the negotiated rulemaking process can be found at: *http://www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html.*

Prior Negotiated Rulemaking

Between November 2009 and January 2010, the Department held three negotiated rulemaking sessions aimed at improving program integrity in the title IV, HEA programs, and that discussed gainful employment and 13 other program integrity topics. As a result of those discussions, during which consensus was not reached on issues related to gainful employment, the Department published three notices of proposed rulemaking (NPRM) related to the topic of gainful employment. Notably, those proposed regulations included two debt measures to determine whether a program provides training that prepares students for gainful employment in a recognized occupation. One measure was based on the Federal student loan repayment rates of students enrolled in the program, and the other measure was based on the debt-to-earnings ratios of students who completed the program.

On October 29, 2010, and June 13, 2011, the Department published final regulations on gainful employment: ''Program Integrity: Reporting/Disclosure Requirements for GE Programs''; ''Program Integrity: Gainful Employment—New Programs''; and ''Gainful Employment: Gainful Employment—Debt Measures'' (75 FR 66832; 75 FR 66665; 76 FR 34385). In this document, we refer to those final regulations, when discussing them collectively, as the ''2011 Final Rules.'' We did not publish final regulations for the NPRM published on September 27, 2011, relating to the application and approval process for new programs that prepare students for gainful employment in a recognized occupation.

Among other things, with respect to the two debt measures for determining whether a program provides training that prepares students for gainful employment in a recognized occupation, the 2011 Final Rules established a maximum debt-to-earnings ratio of 30 percent of discretionary income and 12 percent of annual earnings and a minimum standard of 35 percent for the loan repayment rate.

The chart below summarizes the past NPRMs and 2011 Final Rules.

Date	NPRM	Date	Final rule
June 18, 2010	Program Integrity Issues (75 FR 34806)	Oct. 29, 2010	Reporting/Disclosure Requirements for GE Programs. Effective on July 1, 2011 (75 FR 66832).
July 26, 2010	Gainful Employment (75 FR 43616)	Oct. 29, 2010	Gainful Employment—New Programs (75 FR 66665).
		June 13, 2011	Gainful Employment—Debt Measures (76 FR 34385).
Sept. 27, 2011	Application and Approval Process for New Programs (76 FR 59864).		(No final rule published).

Litigation on the 2011 Final Rules

In July 2011, immediately after the first set of final regulations for gainful employment took effect, the Association of Private Sector Colleges and Universities (APSCU), an industry organization representing for-profit institutions, brought suit against the Department in the U.S. District Court for the District of Columbia challenging, among other things, the debt measures, reporting and disclosure requirements, and new program approval requirements in the 2011 Final Rules. On June 30, 2012, the court struck down most of the 2011 Final Rules, finding that the threshold for the loan repayment measure lacked a reasoned basis. *Association of Private Sector Colleges and Universities* v. *Duncan,* 870 F.Supp.2d 133 (D.D.C. 2012). We refer to the case in this document as ''*APSCU* v. *Duncan.''* Although the court rejected APSCU's argument that the debt-to-earnings measure was not the product of reasoned decision-making, the court nonetheless found that the two debt measures and other provisions of the regulations were so intertwined that the threshold in the loan repayment measure could not be severed from the debt measures and other parts of the regulations. For this reason, the court vacated almost all of the 2011 Final Rules.

Notably, however, the disclosure requirements survived and are still in effect. Under the disclosure requirements, for each GE program, an institution must disclose the occupation that the program prepares students to enter; the on-time graduation rate for students completing the program; the tuition and fees charged; and the placement rate and median loan debt for students completing the program. The court held that the disclosure requirements are within the Department's authority under the HEA and are not arbitrary or capricious.

Additionally, the court noted in its opinion that the Secretary enjoys broad authority to make, promulgate, issue, rescind, and amend the rules and regulations governing the applicable programs administered by the Department and that the Secretary is ''authorized to prescribe such rules and regulations as the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department.'' *APSCU* v. *Duncan,* 870 F.Supp.2d at 141; see 20 U.S.C. 3474 (2006). Furthermore, in responding to the question of whether the Department's regulatory effort to define gainful employment is within the Department's authority, the court agreed with the Department and concluded that the phrase ''gainful employment in a recognized occupation'' is ambiguous and that in enacting it Congress delegated interpretive authority to the Department. Id. at 146.

The Department subsequently filed a motion to alter or amend the judgment,

asking the court to reinstate the vacated reporting requirements, as they were required for the Department to comply with its obligations under the provisions relating to the disclosure requirements. The court denied this motion on March 19, 2013.

In its opinion, the court refused to reinstate the reporting requirements for the reason that they required institutions to report to the Department information about students enrolled in GE programs who did not apply for or receive title IV, HEA program funds. The court concluded that the Department was prohibited under section 134 of the HEA, 20 U.S.C. 1015c, from maintaining information about those students in the Department's National Student Loan Data System (NSLDS), as planned. *APSCU* v. *Duncan,* 930 F.Supp.2d 210 (D.D.C. 2013). Neither the Department nor APSCU appealed the court's rulings.

As a result of *APSCU* v. *Duncan,* certain sections of the 2011 Final Rules were vacated either in whole or in part. For the purpose of this NPRM, when referencing a section that was vacated in part, we treat the entire section as vacated. Throughout this document, we refer to the sections that were vacated or are treated here as vacated as part of the ''2011 Prior Rule.'' Although the text of these vacated sections remains in the CFR and we refer to them in this document in the present tense, these sections are of no effect. Section 668.6(b) of the 2011 Final Rules, relating to disclosure requirements for GE programs, was not vacated as a result of *APSCU* v. *Duncan.* This section remains in effect, and we refer to this section in this document as the ''2011 Current Rule.'' In discussing the current regulations and proposed regulations under ''Significant Proposed Regulations,'' we discuss relevant parts of the 2011 Final Rules, but we distinguish between sections that are part of the 2011 Prior Rule and sections that are part of the 2011 Current Rule.

New Negotiated Rulemaking

On May 1, 2012, the Department published a document in the **Federal Register** (77 FR 25658) announcing its intent to establish a negotiated rulemaking committee under section 492 of the HEA, 20 U.S.C. 1098a, to develop proposed regulations designed to prevent fraud and otherwise ensure proper use of title IV, HEA program funds. In particular, we announced our intent to propose regulations to address the use of debit cards and other banking mechanisms for disbursing title IV, HEA program funds, and to improve and streamline the campus-based Federal Student Aid programs. We also announced two public hearings at which interested parties could comment on the topics suggested by the Department and suggest additional topics for consideration for action by the negotiated rulemaking committee. Those hearings were held on May 23, 2012, in Phoenix, Arizona, and on May 31, 2012, in Washington, DC. We invited parties to comment and submit topics for consideration in writing, as well.

On April 16, 2013, we published a document in the **Federal Register** (78 FR 22467, as corrected at 78 FR 25235), announcing additional topics for consideration for action by the negotiated rulemaking committee. Those additional topics for consideration included cash management of funds provided under the title IV, HEA programs; State authorization for programs offered through distance education or correspondence education; State authorization for foreign locations of institutions located in a State; clock to credit hour conversion; gainful employment; changes made by the Violence Against Women Reauthorization Act of 2013, Public Law 113–4, to the campus safety and security reporting requirements in the HEA; and the definition of ''adverse credit'' for borrowers in the Federal Direct PLUS Loan Program. We also announced three public hearings at which interested parties could comment on the new topics suggested by the Department and suggest additional topics for consideration for action by the negotiating committee.

On May 13, 2013, we announced in the **Federal Register** (78 FR 27880) the addition of a fourth hearing. The four hearings were held in May 2013, in Washington, DC, Minneapolis, Minnesota, and San Francisco, California; and in June 2013, in Atlanta, Georgia. We also invited parties unable to attend a public hearing to submit written comments on the additional topics and to submit other topics for consideration. Transcripts from all six public hearings are available at *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/index.html.* Written comments submitted in response to the May 1, 2012, and April 16, 2013, notices may be viewed through the Federal eRulemaking Portal at *www.regulations.gov.* Instructions for finding comments are available on the site under ''How to Use Regulations.gov'' in the Help section. Individuals can enter docket ID ED–2012–OPE–0008 in the search box to locate the appropriate docket.

On June 12, 2013, we announced in the **Federal Register** (78 FR 35179) our intent to establish a negotiated rulemaking committee to prepare proposed regulations for the title IV, HEA programs. The proposed regulations would establish measures for programs that prepare students for gainful employment in a recognized occupation. The notice requested nominations of individuals for membership on the committee who could represent the interests of key stakeholder constituencies.

The Department considered nominations submitted between the time of the publication of the notice on June 12, 2013, and July 12, 2013. Negotiators were sought to represent constituencies that generally included students; legal assistance organizations that represent students; consumer advocacy organizations; financial aid administrators at postsecondary institutions; State higher education executive officers; State Attorneys General and other appropriate State officials; business and industry; institutions of higher education eligible to receive Federal assistance under title III, parts A, B, and F and title V of the HEA, which include Historically Black Colleges and Universities, Hispanic-Serving Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions, Predominantly Black Institutions, and other institutions with a substantial enrollment of needy students as defined in title III of the HEA; two-year public institutions of higher education; four-year public institutions of higher education; private, non-profit institutions of higher education; private, for-profit institutions of higher education; and regional accrediting agencies, national accrediting agencies, and specialized accrediting agencies. Each constituency selected would have a primary and an alternate member. On August 2, 2013, the Department published the list of negotiators who were selected on its Web site.[1]

The negotiated rulemaking committee met to develop proposed regulations on September 9–11 and November 18–20, 2013. The latter session was rescheduled from October 21–23, due to the shutdown of the Federal Government from October 1–16, which resulted from a lapse in appropriations. At the request of the committee, the Department added a third and final session held on December 13, 2013. These sessions, unlike the sessions

[1] *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/index.html.*

involving the 2011 Final Rules, were focused solely on the topic of gainful employment.

At its first meeting, the committee reached agreement on its protocols, which generally set out the committee membership, the topics of discussion and negotiation, and the standards by which the committee would operate. These protocols provided, among other things, that the non-Federal negotiators would represent in negotiations the organizations listed after their names in the protocols. The committee included the following members:

Rory O'Sullivan, Young Invincibles, and Kalwis Lo (alternate), United States Students Association, representing students.

Eileen Connor, New York Legal Assistance Group, and Whitney Barkley (alternate), Mississippi Center for Justice, representing legal assistance organizations that represent students.

Margaret Reiter, a California-based consumer protection attorney, and Tom Tarantino (alternate), Veterans of America, representing consumer advocacy organizations.

Kevin Jensen, College of Western Idaho, and Rhonda Mohr (alternate), California Community Colleges Chancellor's Office, representing financial aid administrators.

Jack Warner, South Dakota Board of Regents, and Sandra Kinney (alternate), Louisiana Community and Technical College System, representing State higher education executive officers.

Della Justice, Office of the Kentucky Attorney General, and Libby DeBlasio (alternate), Office of the Colorado Attorney General, representing State attorneys.

Ted Daywalt, VetJobs, and Thomas Kriger (alternate), AFL–CIO, representing the business and labor communities.

Helga Greenfield, Spelman College, and Ronnie Higgs (alternate), California State University at Monterey Bay, representing minority-serving institutions.

Richard Heath, Anne Arundel Community College, and Glen Gabert (alternate), Hudson County Community College, representing two-year public institutions.

Barmak Nassirian, American Association of State College and Universities, and Barbara Hoblitzell (alternate), University of California, representing four-year public institutions.

Jenny Rickard, University of Puget Sound, and Thomas Dalton (alternate), Excelsior College, representing private, non-profit institutions.

Brian Jones, Strayer University, and Raymond Testa (alternate), Empire Education Group, representing private, for-profit institutions—publicly traded.

Marc Jerome, Monroe College, and Justin Berkowitz (alternate), Daytona College, representing private, for-profit institutions—not publicly traded.

Belle Wheelan, Southern Association of Colleges and Schools Commission on Colleges, and Neil Harvison (alternate), American Occupational Therapy Association, representing accrediting agencies.

John Kolotos, U.S. Department of Education, representing the Federal Government.

The protocols also provided that, unless agreed to otherwise, consensus on all issues in the proposed regulations had to be achieved for consensus to be reached on the entire proposed rule. The protocols also specified that consensus means that there must be no dissent by any members.

During each of the committee meetings, the committee reviewed and discussed the Department's drafts of proposed regulations and the committee member's alternative proposals and suggestions. At the final meeting on December 13, 2013, the committee did not reach consensus on the Department's proposed regulations. For that reason, and according to the committee's protocols, all parties who participated or were represented in the negotiated rulemaking, in addition to all members of the public, may comment freely on the proposed regulations. For more information on the negotiated rulemaking sessions, please visit: *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/gainfulemployment.html*.

Summary of Relevant Data Available

The Gainful Employment Data

After the effective date of the 2011 Final Rules on July 1, 2011, the Department received, pursuant to the reporting requirements of the 2011 Final Rules, information from institutions on their GE programs for award years 2006–2007 through 2010–2011 (GE Data). The GE Data included information on students who received title IV, HEA program funds, as well as students who did not. After the decisions in *APSCU* v. *Duncan,* the Department removed from NSLDS and destroyed the data on students who did not receive title IV, HEA program funds.

The 2011 GE Informational Rates

In June 2012, the Department released the ''2011 GE informational rates.'' [2] The 2011 GE informational rates include informational debt-to-earnings rates and dollar-based loan repayment rates for GE programs. The 2011 informational debt-to-earnings rates were calculated by program and based on the debt and earnings of students who completed GE programs between October 1, 2006, and September 30, 2008—the ''07/08 2011 D/E rates cohort''. The annual loan payment component of the debt-to-earnings formulas was calculated for each program using information from the GE Data and NSLDS. For the annual earnings figures that were used to make the debt-to-earnings calculations, the Department obtained from the Social Security Administration (SSA) the 2010 annual earnings, by program, of the 07/08 2011 D/E rates cohort. The 2011 informational dollar-based loan repayment rates were calculated by program for students who entered repayment between October 1, 2006, and September 30, 2008—the ''07/08 2011 repayment rates cohort''—on loans under the Federal Family Education Loan (FFEL) Program and under the William D. Ford Direct Loan (Direct Loan) Program for attendance in a GE program. The repayment rate calculations were made using student loan information for the 07/08 2011 repayment rates cohort from the GE Data and NSLDS.

The 2011 GE informational rates had no effect on the eligibility of GE programs. This information was intended to help institutions understand how their programs might fare under the 2011 Final Rules when they became effective.

The Session 1 2012 GE Informational Rates

On August 29, 2013, prior to the first meeting of the negotiated rulemaking committee for the new negotiated rulemaking, the Department released the ''Session 1 2012 GE informational rates'' [3] to inform the committee's discussion of the Department's proposals. The Session 1 2012 GE informational rates include two sets of informational debt-to-earnings rates, informational dollar-based repayment rates, and informational borrower-based

[2] Available at: *http://studentaid.ed.gov/about/data-center/school/ge/data*.

[3] Available at: *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/2013-debt-earnings-data.xls* and *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/2013-repayment-rate-data.xls*; also accessible through *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/gainfulemployment.html*.

repayment rates for GE programs. The Department also issued an explanation of the methodology used to make the Session 1 2012 GE informational rates calculations.[4] The first set of Session 1 2012 GE informational debt-to-earnings rates were calculated by program and based on the debt and earnings of students receiving title IV, HEA program funds who completed GE programs between October 1, 2006, and September 30, 2008—the ''07/08 2012 D/E rates cohort.'' The second set of Session 1 2012 GE informational debt-to-earnings rates were calculated by program and based on the debt and earnings of students receiving title IV, HEA program funds who completed GE programs between October 1, 2007, and September 30, 2009—the ''08/09 2012 D/E rates cohort.''

The annual loan payment component of the debt-to-earnings formula for both sets of Session 1 2012 GE informational debt-to-earnings rates were calculated for each program using information from the GE Data and other information in NSLDS. For the annual earnings figures that were used in the debt-to-earnings calculations, the Department obtained from SSA the 2011 annual earnings, by program, of the 07/08 2012 D/E rates cohort and the 08/09 2012 D/E rates cohort. Both Session 1 2012 GE informational debt-to-earnings rates were calculated using the following criteria:

- N-size: 10
- Amortization schedule: 10 years for all credential levels
- Interest rate: 6.8 percent

See ''§ 668.404 Calculating D/E rates'' for an explanation of these criteria. The Session 1 2012 GE informational debt-to-earnings rates files also include rates calculated using variations of the n-size and amortization schedule criteria for comparative purposes.

The Session 1 2012 GE informational dollar-based and borrower-based loan repayment rates were calculated by program for students receiving title IV, HEA program funds who entered repayment between October 1, 2006, and September 30, 2008—the ''07/08 2012 repayment rates cohort''—on FFEL and Direct Loans for enrollment in a GE program. The repayment rate calculations were made using student loan information for the 07/08 2012 repayment rates cohort from the GE Data and NSLDS.

The Session 1 2012 GE informational rates include information on the sector and institution type for each program based on NSLDS records as of August 2013.

The Session 3 2012 GE Informational Rates

Prior to the third rulemaking session in December 2013, the Department released the ''Session 3 2012 GE informational rates.'' [5] The Session 3 2012 GE informational rates include a revised version of one of the Session 1 2012 GE informational debt-to-earnings rates and, additionally, informational program cohort default rates for GE programs. The Department also issued an explanation of the methodology used to make the 2012 Session 3 GE informational rate calculations.[6]

As described above, one set of the Session 1 2012 GE informational debt-to-earnings rates is based on the debt and earnings of the 08/09 2012 D/E rates cohort. For Session 3, this set of informational debt-to-earnings rates was revised to remove a small group of non-GE programs that were included in the Session 1 2012 GE informational rates by error and, also, recalculated using an interest rate of 3.37 percent. The Session 3 2012 GE informational rates files also include debt-to-earnings rates calculated using variations of the n-size and amortization schedule criteria for comparative purposes.

The Session 3 2012 GE informational program cohort default rates were calculated by program for students receiving title IV, HEA program funds who entered repayment between October 1, 2008, and September 30, 2009—the ''09 2012 program cohort default rates cohort''—on FFEL and Direct Loans for enrollment in a GE program. The program cohort default rate calculations were made using student loan information for the 09 2012 program cohort default rates cohort from the GE Data and NSLDS.

The Session 3 2012 GE informational rates include information on the sector and institution type for each program based on NSLDS records as of August 2013 for programs with D/E rates data. Sector and institution type for programs with pCDR data but no D/E rates data were based on NSLDS records as of November 2013.

The 2012 GE Informational Rates

With this NPRM, the Department has released the ''2012 GE informational rates.'' [7] The 2012 GE informational rates include a recalculated version of the Session 3 2012 GE informational debt-to-earnings rates using the following criteria:

- N-size: 30
- Amortization schedule: 10 years for certificate and associate degree programs, 15 years for bachelor's and master's degree programs, and 20 years for doctoral and first professional programs
- Interest rate: 5.42 percent

See ''§ 668.404 Calculating D/E rates'' for an explanation of these criteria. The 2012 GE informational debt-to-earnings rates files also include debt-to-earnings rates calculated using variations of the n-size and amortization schedule criteria for comparative purposes. In addition to the 2012 GE informational debt-to-earnings rates, the 2012 GE informational rates also include the same informational program cohort default rates released as a part of the Session 3 2012 GE informational rates. The Department's D/E rates analysis and pCDR analysis in this NPRM are based on the 2012 GE informational rates unless otherwise specified.

The 2012 GE informational rates include information on the sector and institution type for each program based on NSLDS records as of November 2013 for all informational rate programs.

Summary of Proposed Regulations

The proposed regulations would—

- Define what it means for a program to provide training that prepares students for gainful employment in a recognized occupation.
- Create a process by which an institution establishes the eligibility of a GE program by certifying that the GE program satisfies applicable accrediting and licensing requirements for the occupations for which the program purports to prepare students.
- Establish an accountability framework, in which two complementary yet independent measures—the D/E rates measure and the pCDR measure—would be used to determine whether a GE program remains eligible for title IV, HEA program funds.
- Establish the process by which a GE program would be evaluated and the

[4] Available at: *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/2013-methodology.doc*, also accessible through *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/gainfulemployment.html*.

[5] Available at: *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/s3-ge-datafile121113.xls*, also accessible through *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/gainfulemployment.html*.

[6] Available at: *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/s3-informational-rates-methodology121113.doc*, also accessible through *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/gainfulemployment.html*.

[7] Available at: *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/gainfulemployment.html*.

standards by which the program would be assessed, under the accountability framework using—

○ The D/E rates measure to evaluate the amount of debt students completing a GE program incurred in the program in comparison to their discretionary and annual earnings after completing the program.

○ The pCDR measure to evaluate the default rate of former students enrolled in a GE program, regardless of whether they completed the program.

• Require institutions with GE programs that could become ineligible in an immediately succeeding year to provide a written warning to students and prospective students of the potential loss of ineligibility and the implications.

• Provide that, for a GE program that loses eligibility for title IV, HEA program funds, as well as any program that is not passing the D/E rates measure and the pCDR measure and that is discontinued by the institution, the loss of eligibility is for three calendar years.

• Require institutions to report relevant information related to its GE programs to the Secretary.

• Require an institution to disclose, including to students and prospective students, relevant information about its GE programs through a disclosure template developed by the Secretary.

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.

Section 668.401 Scope and Purpose

Current Regulations: There is no equivalent provision in the 2011 Final Rules.

Proposed Regulations: Proposed § 668.401 establishes the scope and purpose for subpart Q of the proposed regulations. Subpart Q would establish the rules and procedures under which the Secretary determines a GE program's eligibility for title IV, HEA program funds; an institution reports information about the GE program to the Secretary; and the institution discloses information about the GE program to students and prospective students.

We note that the terms ''gainful employment program'' or ''GE program,'' ''student,'' and ''prospective student,'' which are defined in proposed § 668.402, are first substantively used in proposed § 668.401 and are therefore explained here. Proposed § 668.402, as in § 668.7(a)(2) of the 2011 Prior Rule, provides that a ''gainful employment program'' or ''GE program'' is an educational program offered by an institution under § 668.8(c)(3) or (d) that is identified by using a combination of the institution's six-digit Office of Postsecondary Education ID (OPEID) number, the program's six-digit Classification of instructional program (CIP) code, and credential level. Proposed § 668.401 defines a GE program, for the purpose of subpart Q, as an educational program offered by an eligible institution that prepares students for gainful employment in a recognized occupation and that meets the title IV, HEA program eligibility and other requirements in the proposed regulations.

Under the proposed regulations, the term ''student'' would refer to an individual who received title IV, HEA program funds for enrolling in the applicable GE program. Although we did not specifically define the term ''student'' in the 2011 Final Rules, operationally, ''student'' included any individual enrolled in a GE program, regardless of whether the individual received title IV, HEA program funds. Limiting the term ''student'' to refer to an individual who received title IV, HEA program funds is a significant difference between the proposed regulations and the 2011 Final Rules.

The proposed regulations also define the term ''prospective student'' to refer to an individual who has contacted an eligible institution for the purpose of requesting information about enrolling in a GE program or who has been contacted directly by the institution or indirectly through advertising about enrolling in a GE program. In the 2011 Final Rules, the definition of ''prospective student'' in § 668.41(a) was used in connection with the disclosure requirements in § 668.6(b) and the warning requirements in § 668.7(j). That definition refers only to individuals who have contacted the institution requesting institutional admission information.

Reasons:

Scope

Through this rulemaking, the Department seeks to establish standards for title IV, HEA eligibility of postsecondary educational programs that prepare students for ''gainful employment'' in a recognized occupation, which include nearly all educational programs at for-profit institutions of higher education regardless of program length or credential level, as well as non-degree programs at public and private non-profit institutions such as community colleges. Common GE programs provide training for occupations in cosmetology, business administration, interior design, graphic design, medical assisting, dental assisting, nursing, and massage therapy.

Based on information in the Department's databases, we estimate that there are approximately 50,000 GE programs at postsecondary institutions around the country. We estimate that about 60 percent of these programs are at public institutions, 10 percent at private non-profit institutions, and 30 percent at for-profit institutions. The Federal investment in students attending these programs is significant. We estimate that in fiscal year 2010, approximately 4 million students receiving title IV, HEA program funds were enrolled in GE programs. These students received approximately $9.7 billion in Federal student aid grants and approximately $26 billion in loans.

Purpose

The proposed regulations are intended to address growing concerns about educational programs that, as a condition of eligibility for title IV, HEA program funds, are required by statute to provide training that prepares students for gainful employment in a recognized occupation (GE programs), but instead are leaving students with unaffordable levels of loan debt in relation to their earnings, or leading to default. Many GE programs are producing positive student outcomes. But a disproportionate number are failing to do so.

The Department's primary concerns, which drive both the accountability and transparency frameworks, are that a number of GE programs: (1) do not train students in the skills they need to obtain and maintain jobs in the occupation for which the program purports to train students, (2) provide training for an occupation for which low wages do not justify program costs, and (3) are experiencing a high number of withdrawals or ''churn'' because relatively large numbers of students enroll but few, or none, complete the program, which can often lead to default. The causes of these problems for students are numerous, including excessive costs, low completion rates, a failure to satisfy requirements that are necessary for students to obtain higher paying jobs in a field such as licensing, work experience, and programmatic accreditation, a lack of transparency regarding program outcomes, and aggressive or deceptive marketing practices.

Our analysis of the D/E rates component of the 2012 GE informational rates reveals these poor outcomes among some GE programs. For example, 27 percent of GE programs evaluated produced graduates with

average annual earnings below those of a full-time worker earning no more than the Federal minimum wage ($15,080).[8] [9] Sixty-four percent of GE programs evaluated produced graduates with average annual earnings less than the earnings of individuals who have not obtained a high school diploma ($24,492).[10] [11] Of programs with average earnings below those of a high school dropout, approximately 24 percent of former students defaulted on their Federal student loans within the first three years of entering repayment.[12]

As we noted in connection with the 2011 Prior Rule, the outcomes of students who attend for-profit educational institutions are of particular concern. 76 FR 34386. There is growing evidence of troubling practices at many of these institutions, such as some proprietary institutions overstating job placement rates. There has been growth in the number of *qui tam* lawsuits brought by private parties alleging wrongdoing at these institutions and numerous investigations brought by other Federal and State oversight agencies. Such activity only increases the Department's concerns about poor outcomes in GE programs.

For-profit institutions typically charge higher tuitions than do public postsecondary institutions. 76 FR 34386. Average tuition and fees at less-than-two-year for-profit institutions are more than double the average cost at less-than-two-year public institutions.[13] Attending a two-year for-profit institution costs a student four times as much as attending a community college.[14] Not surprisingly then, students enrolled in for-profit institutions accumulate far greater debt than students at public institutions. 76 FR 34386. In 2011–2012, 86 percent of students who earned certificates from for-profit institutions took out student loans compared to 35 percent of certificate recipients from public two-year institutions.[15] Of those who borrowed, the median loan amount borrowed of for-profit certificate recipients was $11,000 as opposed to $8,000 for certificate recipients from public two-year institutions.[16] Eighty-eight percent of associate degree graduates from for-profit institutions took out student loans, while only 40 percent of associate degree recipients from public two-year institutions took out student loans.[17] Of those who borrowed, for-profit associate degree recipients had a median loan amount borrowed of $23,590 in comparison to $10,000 for students who received their degrees from public two-year institutions.[18] Approximately 22 percent of borrowers who attended for-profit institutions default on their Federal student loans within the first three years of entering repayment as compared to about 13 percent of borrowers who attended public institutions.[19]

Although more expensive, there is growing evidence that many for-profit programs may not prepare students as well as comparable programs at public institutions. 75 FR 43618. A 2011 GAO report reviewed results of licensing exams for 10 occupations that are, by enrollment, among the largest fields of study.[20] The GAO report showed that for 9 out of 10 licensing exams, graduates of for-profit institutions had lower rates of passing than graduates of public institutions.[21] Many for-profit institutions devote greater resources to recruiting and marketing than they do to instruction or to student support services.[22] An investigation by the U.S. Senate Committee on Health, Education, Labor & Pensions (Senate HELP Committee) of thirty prominent for-profit institutions found that they spend almost 23 percent of their revenues on marketing and recruiting, but merely 17 percent on instruction.[23] Among the institutions that provided useable data to the committee, schools employed 35,202 recruiters compared with 3,512 career services staff and 12,452 support services staff.[24]

Lower rates of completion in many four-year for-profit institutions are also a cause for concern. 76 FR 34409. The six-year graduation rate of first-time undergraduate students who began at a four-year degree-granting institution in 2003–2004 was 34 percent at for-profit institutions in comparison to 65 percent at public institutions. However, for first-time undergraduate students who began at a two-year degree-granting institution in 2003–2004, the six-year graduation rate was 40 percent at for-profit institutions in comparison to 35 percent at public institutions.[25]

The higher costs of for-profit institutions, and the consequently greater amounts of debt incurred by their former students, together with generally lower rates of completion, continue to raise concerns about whether for-profit programs lead to earnings that justify the investment made by students. See 75 FR 43617. As we stated in connection with the 2011 Prior Rule, this ''value proposition'' is what ''distinguishes programs 'that lead to gainful employment in a recognized occupation.' '' 76 FR 34386. Analysis of data collected on the outcomes of 2003–2004 first-time beginning postsecondary students as a part of the Beginning Postsecondary Students Longitudinal Study shows that students who attend for-profit institutions are more likely to be idle, not working or in school, six years after starting their programs of study in comparison to students who attend other types of institutions.[26] Further, for-profit students no longer enrolled in school six years after beginning postsecondary education have lower earnings at the six-year mark than students who attend other types of institutions.[27]

These outcomes are troubling for two reasons. First, some students will have earnings that will not support the debt

[8] At the Federal minimum wage of $7.25 per hour (*www.dol.gov/whd/minimumwage.htm*), an individual working 40 hours per week for 52 weeks per year would have annual earnings of $15,080.

[9] 2012 GE informational rates. Our analysis by sector shows the following: Of the 5,539 programs evaluated with earnings data, 30 percent of for-profit programs and 13 percent of public non-profit programs produced graduates with average annual earnings below a Federal minimum wage worker.

[10] Based on a weekly wage of $471 (*http://www.bls.gov/emp/ep_chart_001.htm*) for 52 weeks.

[11] 2012 GE informational rates. Our analysis by sector shows the following: Of the 5,539 programs evaluated with earnings data, 72 percent of for-profit programs and 32 percent of public non-profit programs produced graduates with average annual earnings less than the earnings of individuals who have not obtained a high school degree.

[12] 2012 GE informational rates.

[13] IPEDS First Look (July 2013), table 2. Average costs (in constant 2012–13 dollars) associated with attendance for full-time, first-time degree/certificate-seeking undergraduates at Title IV institutions operating on an academic year calendar system, and percentage change, by level of institution, type of cost, and other selected characteristics: United States, academic years 2010–11 and 2012–13.

[14] Id.

[15] National Postsecondary Student Aid Study 2012.

[16] Id.

[17] Id.

[18] Id.

[19] Based on the Department's analysis of the three-year cohort default rates for fiscal year 2010, U.S. Department of Education, available at *www.ed.gov/news/press-releases/default-rates-continue-rise-federal-student-loans.*

[20] Postsecondary Education: Student Outcomes Vary at For-Profit, Nonprofit, and Public Schools (GAO–12–143), GAO, December 7, 2011.

[21] Id.

[22] For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success, Senate HELP Committee, July 30, 2012.

[23] Id.

[24] Id.

[25] U.S. Department of Education, National Center for Education Statistics (NCES), 2003–04 Beginning Postsecondary Students Longitudinal Study, Second Follow-up (BPS:04/09) (cumulative certificate, associate's degree, and bachelor's degree attainment at any institution).

[26] Deming, D., Goldin, C., and Katz, L., The For-Profit Postsecondary School Sector: Nimble Critters or Agile Predators?, *Journal of Economic Perspectives,* vol. 26, no. 1, Winter 2012.

[27] Id.

they incurred to enroll in these GE programs. Second, because students are limited under the HEA in the amounts of Federal grants and loans they may receive to support their education, their options to move to higher-quality and affordable programs are constrained as they may no longer have access to sufficient student aid. Specifically, Federal law sets lifetime limits on the amount of grant and subsidized loan assistance students may receive: Federal Pell Grants may be received only for the equivalent of 12 semesters of full-time attendance, and Federal subsidized loans may be received for no longer than 150 percent of the published program length.[28] These limitations make it even more critical that students' initial choices in GE programs prepare them for employment that provides adequate earnings and do not result in excessive debt.

In addition to concerns that some GE programs are not meeting the gainful employment requirement, the Department remains concerned that students seeking to enroll in these programs do not have access to reliable information that will enable them to compare programs in order to make informed decisions about where to invest their time and limited educational funding. As we noted in the 2011 Prior Rule, the Government Accountability Office (GAO) and other investigators have found evidence of high-pressure and deceptive recruiting practices at some for-profit institutions. See 76 FR 34386. In 2010, the GAO released results of undercover testing at 15 for-profit colleges across several States.[29] Thirteen of the colleges tested gave undercover student applicants ''deceptive or otherwise questionable information'' about graduation rates, job placement, or expected earnings.[30] Similarly, a more recent report by the Senate HELP Committee on the for-profit education sector found evidence that many of the most prominent for-profit institutions engage in aggressive sales practices and provide misleading information to prospective students.[31] Recruiters described ''boiler room''-like sales and marketing tactics and internal institutional documents showed that recruiters are taught to identify and manipulate emotional vulnerabilities and target non-traditional students.[32]

More recently, a growing number of State and other Federal law enforcement authorities have launched investigations into whether the institutions that offer GE programs are using aggressive or even deceptive marketing and recruiting practices. Several State Attorneys General have already sued for-profit institutions to stop these fraudulent marketing practices and manipulations of job placement rates. On August 19, 2013, the New York State Attorney General announced a $10.25 million settlement with Career Education Corporation (CEC), a private for-profit education company, after its investigation revealed that CEC significantly inflated its graduates' job placement rates in disclosures made to students, accreditors, and the State.[33] The State of Illinois sued Westwood College for misrepresentations and false promises made to students enrolling in the company's criminal justice program.[34] The Commonwealth of Kentucky has filed lawsuits against several private for-profit institutions, including National College of Kentucky, Inc., for misrepresenting job placement rates, and Daymar College, Inc., for misleading students about financial aid and overcharging for textbooks.[35] And most recently, early this year, a group of 13 State Attorneys General issued Civil Investigatory Demands to Corinthian Colleges, Inc., Education Management Co., ITT Educational Services, Inc., and CEC, seeking information about student placement rate data and marketing and student recruitment practices of the companies. The States participating include Arizona, Arkansas, Connecticut, Idaho, Iowa, Kentucky, Missouri, Nebraska, North Carolina, Oregon, Pennsylvania, Tennessee, and Washington.

A 2012 report released by the Senate HELP Committee found extensive evidence of aggressive and deceptive recruiting practices, excessive tuition, and regulatory evasion and manipulation by for-profit colleges that preyed on service members, veterans, and their families as ''dollar signs in uniform.'' [36] The Los Angeles Times reported that recruiters from for-profit colleges have been known to recruit at Wounded Warriors centers and at veterans hospitals, where injured soldiers are pressured into enrolling through promises of free education and more.[37] Some for-profit colleges lure service members and veterans through a number of improper practices, including by offering post-9/11 GI Bill benefits that are intended for living expenses as ''free money,'' which is difficult for jobless veterans returning home to turn down.[38] This results in many veterans enrolling in online courses to get the monthly benefits even if they have no intention of completing the coursework.[39] In addition, some institutions have recruited veterans with serious brain injuries and emotional vulnerabilities without providing adequate support and counseling, engaged in misleading recruiting practices onsite at military installations, and failed to accurately disclose information regarding the graduation rates of veterans.[40] In June 2012, an investigation in 20 States, led by the Commonwealth of Kentucky's Attorney General, resulted in a $2.5 million settlement with QuinStreet, Inc. and the closure of GIBill.com, a Web site that appeared as if it was an official site of the U.S. Department of Veterans Affairs, but was in reality a for-profit portal that steered veterans to 15 colleges, almost all for-profit institutions, including Kaplan University, the University of Phoenix, Strayer University, DeVry University, and Westwood College.[41]

Further, the Consumer Financial Protection Bureau issued Civil

[28] See section 401(c)(5) of the HEA, 20 U.S.C. 1070a(c)(5), for Pell Grant limitation; see section 455(q) of the HEA, 20 U.S.C. 1087e(q), for the 150 percent limitation.

[29] For-Profit Colleges: Undercover Testing Finds Colleges Encouraged Fraud and Engaged in Deceptive and Questionable Marketing Practices (GAO–10–948T), GAO, August 4, 2010 (reissued November 30, 2010).

[30] Id.

[31] For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success, Senate HELP Committee, July 30, 2012.

[32] Id.

[33] ''A.G. Schneiderman Announces Groundbreaking $10.25 Million Dollar Settlement with For-Profit Education Company That Inflated Job Placement Rates to Attract Students,'' press release, Aug. 19, 2013. Available at: *www.ag.ny.gov/press-release/ag-schneiderman-announces-groundbreaking-1025-million-dollar-settlement-profit.*

[34] ''Attorneys General Take Aim at For-Profit Colleges' Institutional Loan Programs,'' The Chronicle of Higher Education, March 20, 2012. Available at: *http://chronicle.com/article/Attorneys-General-Take-Aim-at/131254/.*

[35] ''Kentucky Showdown,'' Inside Higher Ed, Nov. 3, 2011. Available at: *www.insidehighered.com/news/2011/11/03/ky-attorney-general-jack-conway-battles-profits.*

[36] ''Dollar Signs in Uniform,'' Los Angeles Times, Nov. 12, 2012. Available at: *http://articles.latimes.com/2012/nov/12/opinion/la-oe-shakely-veterans-college-profit-20121112*; citing ''Harkin Report,'' S. Prt. 112–37, For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success, July 30, 2012.

[37] Id.

[38] Id.

[39] Id.

[40] ''We Can't Wait: President Obama Takes Action to Stop Deceptive and Misleading Practices by Educational Institutions that Target Veterans, Service Members and their Families,'' White House Press Release, April 26, 2012. Available at: *www.whitehouse.gov/the-press-office/2012/04/26/we-can-t-wait-president-obama-takes-action-stop-deceptive-and-misleading.*

[41] ''$2.5M Settlement over 'GIBill.com','' Inside Higher Ed, June 28, 2012. Available at: *www.insidehighered.com/news/2012/06/28/attorneys-general-announce-settlement-profit-college-marketer.*

Investigatory Demands to Corinthian Colleges, Inc. and ITT Educational Services, Inc. in November, 2013, demanding information about their marketing, advertising, and lending policies.[42] The Securities and Exchange Commission also subpoenaed records from Corinthian Colleges, Inc. on June 6, 2013, seeking student information in the areas of recruitment, attendance, completion, placement, and loan defaults.[43] These inquiries supplement the Department's existing monitoring and compliance efforts to protect against such abuses.

Simply put, without reliable information, students, prospective students, and their families are vulnerable to inaccurate or misleading information when they make critical decisions about their educational investments and, based on that information, may enroll in poorly performing programs. Furthermore, without accurate and comparable information, the public, taxpayers, and the Government are in the dark as to the performance of these programs and the return on the Federal investment in these programs. Although we do not seek to impose requirements through this rulemaking that specifically address all of these allegations of abuse, the proposed regulations would help ensure, among other things, that students, prospective students, and their families and the public, taxpayers, and the Government are provided with reliable and comparable information about the student outcomes of GE programs.

We acknowledge that since the prior rulemaking effort in 2011, some for-profit institutions have made positive changes to their GE programs. For example, some institutions now offer trial enrollment periods for students before they require a full financial commitment and scholarships to students who reach milestones toward completing their programs.[44] These steps show that positive change is possible, but the concerns highlighted here demonstrate that more improvement in the sector is needed. To encourage institutions to start or continue to take effective action to reduce debt and increase earnings prospects for students, by this regulatory action, we propose to define what it means for a program to provide training that prepares students for gainful employment in a recognized occupation by establishing measures a program must meet in order to be eligible for title IV, HEA program funds, and to better inform students, prospective students, and their families, as well as the public, taxpayers, and the Government, by requiring institutions to report and disclose relevant information about the outcomes of their GE programs.

Legal Authority

We seek, through this regulatory action, to define a statutory requirement that applies only to certain educational programs—GE programs—and which is a condition of eligibility for title IV, HEA program funds. Title IV, HEA program funds are Federal student aid funds available to students and parents to assist them in paying for a postsecondary educational program. These funds include student loans under the Direct Loan Program, the Federal Perkins Loan (Perkins Loan) Program, and (until 2010) the FFEL Program; grants under the Federal Pell Grant Program, the Federal Supplemental Educational Opportunity Grant Program, the Iraq-Afghanistan Service Grant Program, and the TEACH Grant Program; and earnings under the Federal Work-Study Program.

Under title IV of the HEA, institutions must establish eligibility to offer eligible programs in order for their students to receive Federal student aid funds. In some cases, eligible institutions must separately establish the eligibility of their programs in order for students in those programs to receive title IV, HEA assistance. See, e.g., 20 U.S.C. 1001(a)(3), 34 CFR 668.8(c) (educational program offered by public or private non-profit institution of higher education must lead to or be creditable toward recognized credential); 34 CFR 600.20(c) (approval required for institution to increase level of programs from undergraduate to graduate); 20 U.S.C. 1088(b)(3), 34 CFR 668.8(m) (program offered through telecommunications eligible only if accredited by agency recognized by the Department to evaluate such programs).

One type of program for which an institution must establish program-level title IV, HEA eligibility is ''a program of training to prepare students for gainful employment in a recognized occupation,'' which is the subject of this rulemaking. 20 U.S.C. 1001(b)(1), 1002(b)(1)(A)(i), (c)(1)(A). Section 481 of the HEA articulates this same requirement: as pertinent here, it defines an ''eligible program'' as a ''program of training to prepare students for gainful employment in a recognized profession.'' 20 U.S.C. 1088(b). This statutory requirement—the ''gainful employment'' requirement—is what the Department seeks to define here.

The Department's authority for this regulatory action is derived primarily from these provisions, which establish the gainful employment requirement, and two additional sources. These authorities, including relevant legislative history which supports components of the GE accountability framework, are discussed here and also in more detail in ''§ 668.403 Gainful employment framework.'' Specifically, section 410 of the General Education Provisions Act provides the Secretary with authority to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operations of, and governing the applicable programs administered by, the Department. 20 U.S.C. 1221e–3. This authority includes the power to promulgate regulations relating to programs administered by the Department, such as the title IV, HEA programs that provide Federal loans, grants, and other aid to students. Furthermore, section 414 of the Department of Education Organization Act (DEOA) authorizes the Secretary to prescribe those rules and regulations the Secretary determines necessary or appropriate to administer and manage the functions of the Department. 20 U.S.C. 3474. These authorities thus empower the Secretary to promulgate regulations that, in this case, define the gainful employment requirement in the HEA by: establishing measures to determine the eligibility of GE programs for title IV, HEA program funds; requiring institutions to report information about the programs to the Secretary; and requiring institutions to

[42] ''For Profit Colleges Face New Wave of State Investigations, Bloomberg, Jan. 29, 2014. Available at: *www.bloomberg.com/news/2014–01–29/for-profit-colleges-face-new-wave-of-coordinated-state-probes.html.*

[43] ''Corinthian Colleges Crumbles 14% on SEC probe,'' Fox Business, June 11, 2013. Available at: *www.foxbusiness.com/government/2013/06/11/corinthian-colleges-crumbles-14-on-sec-probe/.*

[44] See, e.g., ''More Selective For-Profits,'' *Inside Higher Ed,* Nov. 11, 2011 (Kaplan University and the University of Phoenix both ''recently began new programs that make it easier for unprepared students to leave without taking on debt''), available at *www.insidehighered.com/news/2011/11/11/enrollments-tumble-profit-colleges.* See also, e.g., DeVry University, Form 10–Q, United States Securities and Exchange Commission, for the quarterly period ended Sept. 30, 2013 (''Over the past year DeVry has reduced costs through staffing adjustments and by lowering costs. Management has made the decision to close or consolidate certain DeVry University campuses while balancing the potential impact on enrollment and student satisfaction. Management is also focused on process redesign and restructuring in areas such as student finance. . . . Under the Career Catalyst Scholarship DeVry University has committed more than $15 million over the next three years to be awarded to qualifying students who enroll in the September 2013 session), available at *www.sec.gov/Archives/edgar/data/730464/000114420413058782/v357757_10q.htm.*

disclose information about the programs to students, prospective students, and their families, the public, taxpayers, and the Government, and institutions.

Section 431 of the DEOA gives the Department added authority to establish rules to require institutions to make data available to the public on the performance of their GE programs and about students enrolled in those programs. That section gives the Secretary the authority to inform the public about federally supported education programs, and to collect data and information on applicable programs for the purpose of obtaining objective measurements of their effectiveness in achieving their intended purposes. 20 U.S.C. 1231a. This provision lends additional support for the proposed reporting and disclosure requirements, which will enable the Secretary to collect data and information related to GE programs, for the purpose of evaluating whether they are achieving their intended purpose, and to inform the public about relevant information related to those federally supported programs.

As discussed in the ''Background of The Proposed Regulations, Public Participation, and Negotiated Rulemaking,'' some of these authorities were subject to scrutiny by the U.S. District Court for the District of Columbia in *Association of Private Sector Colleges and Universities* v. *Duncan,* 870 F.Supp.2d 133 (D.D.C. 2012), and 930 F.Supp.2d 210 (D.D.C. 2013), a suit brought by APSCU to challenge the Department's 2011 prior rulemaking efforts to define the gainful employment requirement. In deciding that challenge, the court reached several conclusions about the Department's rulemaking authority in this matter, and its conclusions have informed and framed the Department's exercise of that authority in proposing these regulations. Notably, the court agreed with the Department's position that the Secretary enjoys broad authority to make, promulgate, issue, rescind, and amend the rules and regulations governing the applicable programs administered by the Department, such as the title IV, HEA programs, and that the Secretary is ''authorized to prescribe such rules and regulations as the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department.'' *APSCU* v. *Duncan,* 870 F.Supp.2d at 141; see 20 U.S.C. 3474. Furthermore, in answering the question whether the Department's regulatory effort to define the gainful employment requirement fell within its statutory authority, the court found the exercise within that power. Specifically, it concluded that the phrase ''gainful employment in a recognized occupation'' is ambiguous and that in enacting the requirement that used that phrase, Congress delegated interpretive authority to the Department. *APSCU* v. *Duncan,* 870 F.Supp.2d at 146.

Likewise, the court upheld the Department's disclosure requirements, which are still in effect, rejecting APSCU's challenge to this provision and finding that the disclosure requirements ''fall comfortably within [the Secretary's] regulatory power,'' and are ''not arbitrary or capricious.'' Id. at 156.

Overview of Accountability and Transparency Frameworks

As stated previously, the Department's goals in the proposed regulations are twofold: to establish an accountability framework for GE programs, and to increase the transparency of student outcomes of GE programs. In addition, we believe a key benefit of this regulatory action would be to receive suggestions on how to identify programs that are exceptional performers, and how to share best practices with institutions interested in improving their programs. Although recognition of exceptional programs is not expressly addressed in the proposed regulations, we invite comment on ways in which the best programs could, consistent with our authority under the HEA, be identified and rewarded and how best practices could be highlighted and shared with others.

In service of these goals, we are proposing an accountability framework based upon program certification requirements and minimum standards for program outcomes. We are also proposing reporting and disclosure requirements designed to both support the accountability framework and to increase transparency so that relevant information regarding GE programs is disseminated to students, prospective students, and their families, the public, taxpayers, and the Government, and institutions.

As part of the accountability framework, to determine whether a program provides training that prepares students for gainful employment as required by the HEA, we propose procedures to establish a program's eligibility and to measure its outcomes on a continuing basis. To establish a program's eligibility, an institution would be required to certify that each of its GE programs meets all applicable accreditation and licensure requirements necessary for a student to obtain employment in the occupation for which the program provides training. This certification would be incorporated into the institution's program participation agreement. For a more detailed discussion of the proposed certification requirements, see ''§ 668.414 Certification requirements for GE programs.''

To assess the continuing eligibility of a GE program, we propose to use two measures—one measure that compares the debt incurred by students completing the program against their earnings (the ''debt-to-earnings rates'' or ''D/E rates'') and a second measure that examines the rate at which borrowers who previously enrolled in the program default on their FFEL or Direct Loans (''program cohort default rate'' or ''pCDR''). The proposed regulations would establish minimum thresholds for the D/E rates measure and the pCDR measure. The D/E rates and the pCDR measures would operate independently of each other, as they are designed to achieve complementary objectives, capturing two ways a program could fail to meet the gainful employment requirement.

In addition to the accountability framework, the proposed regulations include institutional reporting and disclosure requirements designed to increase the transparency of student outcomes for GE programs. As discussed more fully under ''§ 668.411 Reporting requirements for GE programs,'' we would require institutions to report information that is necessary to implement aspects of the proposed regulations that support the Department's two goals of accountability and transparency. This would include information needed to calculate the D/E rates and the pCDR, as well as some of the specific required disclosures. As discussed more fully under ''§ 668.412 Disclosure requirements for GE programs,'' the proposed disclosure requirements would operate independently of the proposed eligibility requirements and ensure that relevant information regarding GE programs is made available to students, prospective students, and their families, the public, taxpayers, and the Government, and institutions. These provisions would provide for accountability and transparency throughout the admissions and enrollment process so that students, prospective students, and their families can make informed decisions. Specifically, institutions would be required to make information regarding such items as cost of attendance, completion, debt, earnings, and student loan repayment available in a meaningful and easily accessible format.

In the proposed regulations, we use the term ''student'' to refer specifically

to individuals who received title IV, HEA program funds for enrolling in the applicable GE program. The term would not include individuals who did not receive title IV, HEA program funds to enroll in an eligible GE program, even if they filed a Free Application for Federal Student Aid (FAFSA).

We believe that this definition is appropriate for two reasons. First, this approach is aligned with the court's interpretation in *APSCU* v. *Duncan* of relevant law regarding the Department's authority to maintain records in its NSLDS. See ''Background of The Proposed Regulations, Public Participation, and Negotiated Rulemaking'' for a more complete discussion of *APSCU* v. *Duncan.* Second, because the primary purpose for which we would use the GE measures is to determine whether a program should continue to be eligible for title IV, HEA program funds, we believe we can make a sufficient assessment of whether a program prepares students for gainful employment based only on the outcomes for students who receive title IV, HEA program funds. By limiting the GE measures to assess outcomes of only students who receive title IV, HEA program funds, the Department can effectively evaluate how the GE program is performing with respect to the students who received the Federal benefit that we are charged with administering. We note that this definition of ''student'' would apply throughout subpart Q.

Some of the negotiators believed that there were instances where the definition of ''student'' should be defined more broadly. Negotiators proposed that the term include all students who enrolled in a program or, in light of *APSCU* v. *Duncan,* all students who are in NSLDS because they applied for title IV, HEA program funds by filing a FAFSA or because they received title IV, HEA program funds for attendance in other eligible programs, in both cases irrespective of whether they received title IV, HEA program funds for the GE program. The negotiators proposed that the broader definition could be used for some purposes, such as calculating the completion and withdrawal rates, or the median loan debt, for a GE program.

We believe that our proposed definition is better aligned with our goals of evaluating a GE program's performance for the purpose of continuing eligibility for title IV, HEA program funds. In addition, this approach is consistent with our goal of providing students and prospective students who are eligible for title IV, HEA program funds with relevant information that will help them in considering where to invest their resources and limited eligibility for title IV, HEA program funds.

Similarly, we also propose to define the term ''prospective student'' in subpart Q in order to add clarity to the regulations. Our proposed definition is broader than the one used in the 2011 Final Rules. In response to comments we received from a number of the negotiators, the proposed definition accounts for the various ways that institutions and prospective students commonly interact. Specifically, we modified the definition of ''prospective student'' to address concerns raised by some of the negotiators that the definition of prospective student in § 668.41(a), which was used in the 2011 Final Rules, is inadequate for the purpose of subpart Q. In particular, the negotiators noted that this definition only applies where an individual has initiated contact with an institution for information and not when the institution contacts the individual. We agree with the negotiators that this would not capture the common circumstances in which institutions first contact individuals about enrollment in a GE program, and that this type of outreach should be captured in the definition.

Section 668.402 Definitions

Current Regulations: Section 668.7(a)(2) of the 2011 Prior Rule defines, for use in the 2011 Prior Rule, the terms ''program,'' ''debt measures,'' ''fiscal year,'' ''two-year period,'' ''four-year period,'' and ''discretionary income.''

Proposed Regulations: Proposed § 668.402 defines a number of terms that are used in the proposed regulations. The proposed defined terms and the sections in which they would be first substantively used are:

- Annual earnings rate, § 668.403
- Classification of instructional program (CIP) code, § 668.411
- Cohort period, § 668.404
- Credential level, § 668.411
- Debt-to-earnings rates (D/E rates), § 668.403
- Discretionary income rate, § 668.403
- Four-year cohort period, § 668.404
- Gainful employment program (GE program), § 668.401
- GE measures, § 668.403
- Length of the program, § 668.411
- Metropolitan Statistical Area (MSA), § 668.412
- Poverty Guideline, § 668.404
- Program cohort default rate (pCDR), § 668.403
- Prospective student, § 668.401
- Student, § 668.401
- Title IV loan, § 668.404
- Two-year cohort period, § 668.404

Generally, where the 2011 Prior Rule and the proposed regulations are similar, the relevant defined terms are similar, with clarifications and changes as needed to reflect any differences.

Reasons: Section 668.402 would provide definitions for significant terms used in the proposed regulations. Although some of these terms were not defined in the 2011 Final Rules, uniform usage of the terms would make it easier for institutions to understand the proposed standards and requirements for GE programs and for students and prospective students to understand the information about GE programs that the proposed regulations would provide. Our reasoning for proposing each definition is discussed in the section in which the defined term is first substantively used.

Section 668.403 Gainful Employment Framework

Current Regulations: Under § 668.7(a)(1) of the 2011 Prior Rule, a program would meet the gainful employment requirement if (1) the program's annual loan repayment rate is at least 35 percent or (2) the program's annual loan payment is less than or equal to 30 percent of discretionary income (''discretionary income rate'') or less than or equal to 12 percent of annual earnings (''earnings rate''). Under the 2011 Prior Rule, the loan repayment rate, discretionary income rate, and the earnings rate would be collectively referred to as the ''debt measures.'' A program would also meet the gainful employment requirement if the data needed to determine whether the program satisfies the minimum standards under § 668.7(a)(1) of the 2011 Prior Rule are not available. Further, a program would satisfy the debt measures under any of the following circumstances: the program did not have the minimum number of students who completed the program over the applicable cohort period to calculate the debt-to-earnings ratios; SSA did not provide the earnings information necessary to calculate the debt-to-earnings ratios; or the median loan debt for the program is zero. Under § 668.7(i) of the 2011 Prior Rule, a program would become ineligible for title IV, HEA program funds if it does not satisfy any of the debt measures for three out of the four most recent fiscal years.

Proposed Regulations: Section 668.403 of the proposed regulations sets forth the accountability framework under which the Department would

determine whether programs prepare students for gainful employment in a recognized occupation and whether those programs are eligible for title IV, HEA program funds. Under the accountability framework, to establish a program's eligibility for title IV, HEA program funds, an institution would be required to satisfy the certification requirements of proposed § 668.414 for each of its GE programs. To remain eligible for title IV, HEA program funds, an institution would have to satisfy the D/E rates measure and the pCDR measure. The D/E rates and the pCDR measures would operate independently. Results of one measure would not affect results of the other.

Under the D/E rates measure, we would apply as accountability metrics the same two debt-to-earnings ratios (referred to in the proposed regulations as the ''debt-to-earnings rates'' or the ''D/E rates'')—the annual earnings rate and the discretionary income rate—as the 2011 Prior Rule. Also consistent with the 2011 Prior Rule, both D/E rates would evaluate the outcomes of only those students who completed a program. For an explanation of the methodology that would be used to calculate the D/E rates, see ''§ 668.404 Calculating D/E rates.''

We do not include in the proposed accountability framework the loan repayment rate metric of the 2011 Prior Rule. Instead, the proposed regulations replace the loan repayment rate with a program-level cohort default rate (pCDR) that measures the percentage of students who enrolled in a GE program and defaulted on their Direct and FFEL loans. Like the loan repayment rate in the 2011 Prior Rule, and unlike the D/E rates which only measure the outcomes of students who completed a program, the pCDR measure would evaluate the outcomes of students who enrolled in but did not complete a program in addition to the outcomes of students who completed the program. For an explanation of the methodology that would be used to calculate the pCDR measure, see ''§ 668.407 Calculating pCDR.''

Certification Requirements

Proposed §§ 668.403(a) and 668.414 would require that an institution certify that each of its GE programs meets applicable accreditation and State and Federal licensing requirements to be eligible for title IV, HEA program funds. The 2011 Prior Rule did not include any similar certification requirements. For a more detailed discussion of the proposed certification requirements, see ''§ 668.414 Certification requirements for GE programs.''

D/E Rates

D/E rates would be calculated each year for an eligible GE program if at least 30 students completed the program during an applicable cohort period, as described in ''§ 668.404 Calculating D/E rates.'' A GE program would pass the D/E rates measure if its discretionary income rate is less than or equal to 20 percent *or* its annual earnings rate is less than or equal to 8 percent. A program would fail the D/E rates measure if its discretionary income rate is greater than 30 percent *and* its annual earnings rate is greater than 12 percent. A program would be ''in the zone'' under the D/E rates measure if it is not a passing program and its discretionary income rate is greater than 20 percent but less than or equal to 30 percent *or* its annual earnings rate is greater than 8 percent but less than or equal to 12 percent. See ''§ 668.410 Consequences of GE measures'' for an explanation of the restrictions that would apply to programs with zone or failing D/E rates.

As under the 2011 Prior Rule, a program would pass both D/E rates if its median loan debt is zero. A program would fail the discretionary income rate if the discretionary income is zero or negative. A program would fail both D/E rates if its mean or median annual earnings are zero. Although the 2011 Prior Rule did not specifically include the latter provision, it follows that a program with zero mean or median annual earnings could not satisfy the debt-to-earnings ratios and would have been assessed accordingly.

A program would become ineligible under the D/E rates measure in either of two ways. First, a program would become ineligible if it is a failing program in two out of any three consecutive award years for which the program's D/E rates are calculated. Second, a program would become ineligible if, for four consecutive award years in which the D/E rates measure is calculated, it is failing or in the zone. It is important to note that a program could have a mix of zone and failing D/E rates and still remain eligible over the course of the four-year period as long as the program's failing results did not occur in two out of three consecutive award years. But, if a program does not pass at least once over any four-year period, it would become ineligible.

With respect to the D/E rates, the framework of the proposed regulations would differ from the 2011 Prior Rule in several ways. First, the D/E rates would be calculated for award years rather than fiscal years as they were in the 2011 Prior Rule. See ''§ 668.404 Calculating D/E rates'' for an explanation of the differences between an award year and a fiscal year. Second, the proposed regulations would establish stricter passing thresholds than the thresholds in the 2011 Prior Rule. The passing threshold for the discretionary income rate would be 20 percent instead of 30 percent, and the threshold for the annual earnings rate would be 8 percent instead of 12 percent. Third, the proposed regulations would add a zone category for programs with a discretionary income rate greater than 20 percent but less than or equal to 30 percent or an annual earnings rate greater than 8 percent but less than or equal to 12 percent. Fourth, the proposed regulations would allow programs with a mix of D/E rates that are failing and in the zone up to four years to become passing before losing eligibility. Finally, a program failing the D/E rates measure would lose eligibility sooner than under the 2011 Prior Rule. Specifically, a program would become ineligible after failing the D/E rates measure in two out of any three consecutive award years instead of in three out of any four consecutive fiscal years as provided under the 2011 Prior Rule. It is important to note that, as explained in ''§ 668.401 Scope and purpose'' and ''§ 668.404 Calculating D/E rates,'' unlike in the 2011 Prior Rule, which considered all students in its calculation of the debt measures, the D/E rates would only consider students who received title IV, HEA program funds for enrolling in the program.

pCDR

An eligible GE program's pCDR would be calculated each year. A GE program would pass the pCDR measure if its pCDR is less than 30 percent and would fail the pCDR measure if its pCDR is 30 percent or greater. See ''§ 668.410 Consequences of GE measures'' for an explanation of the restrictions that would apply to programs that fail the pCDR measure. A GE program would become ineligible if it fails the pCDR measure for three consecutive fiscal years.

The following charts illustrate the key components of the proposed GE measures.

OVERVIEW OF METRICS IN THE PROPOSED REGULATIONS

D/E rates	Program cohort default rate
Students	
Students who received title IV, HEA program funds and completed the program.	Students who received title IV, HEA program funds, whether or not they completed the program.
Funds	
Title IV, HEA FFEL or Direct Loans, Perkins Loans, title IV grants, private loans, institutional loans or credit (Students would be included in calculation even if they received grants only but no loans.).	Title IV FFEL or Direct Loans (Only borrowers would be included in calculation.)
Measurement period	
Annual loan payment of students who completed in the 3rd-4th (2-year period) or 3rd-6th award years (4-year period) prior to the award year for which D/E rates are calculated. Earnings of these students for most recently completed calendar year. For example, 2014–2015 D/E rates calculation: Annual loan payment of students who completed in award years 2010–2011 and 2011–2012 (2-year period); earnings for 2014 calendar year.	Of borrowers who entered repayment 3 fiscal years prior to the year in which pCDR is calculated, percentage who defaulted by end of the subsequent 2 fiscal years. For example, 2016 pCDR calculation: Of borrowers who entered repayment in fiscal year 2013, percentage who defaulted by end of fiscal year 2015.
Categories & thresholds	
Pass: annual D/E ≤ 8% Or discretionary D/E ≤ 20% ..... Zone: 8% < annual D/E ≤ 12% Or 20% < discretionary D/E ≤ 30%. Fail: annual D/E > 12% AND discretionary D/E > 30%.	Pass: pCDR < 30% Fail: pCDR ≥ 30%
Ineligibility	
A program becomes ineligible for 3 years if: ..... It fails in any 2 out of 3 consecutive years. *OR*. Does not pass in any 1 out of 4 consecutive years (can be mix of zone or failing results, but not 2 fails out of 3 consecutive years).	A program becomes ineligible for 3 years if it fails for 3 consecutive years.
Other consequences	
If a problem could become ineligible based on its next D/E rates, the institution must issue warnings to enrolled and prospective students and add warning to disclosure template.	If a problem could become ineligible based on its next pCDR, the institution must issue warnings to enrolled and prospective students and add warning to disclosure template.

Independence of the D/E Rates and pCDR Measures

To maintain eligibility, a GE program would have to pass either of the D/E rates—the discretionary income rate or the annual earnings rate—and would also have to pass the pCDR measure. Unlike the 2011 Prior Rule where a program could become ineligible only if it failed all of the metrics, under the proposed regulations, a program could become ineligible if it does not pass the D/E rates measure only, does not pass the pCDR measure only, or does not pass both the D/E rates and pCDR measures.

Under § 668.7(d)(2)(i)(A) of the 2011 Prior Rule, if the number of students reflected in the calculations did not meet the minimum number of students necessary to calculate either or both of the debt measures, the debt-to-earnings ratios and the loan repayment rate, then the program was considered to have satisfied both of the debt measures. This would be the case even if the minimum number of students necessary to calculate one of the measures was met and the rate for that measure was a failing rate.

Under the proposed regulations, a program would receive a pCDR result that would be used to assess the program regardless of whether D/E rates could be calculated for the program. If the D/E rates also could be calculated, then the program would receive results under both metrics. Further, as stated previously, the results of one metric would not affect the results of the other. For example, a program could simultaneously pass the D/E rates measure, but fail the pCDR measure. Likewise, a program could simultaneously be ''in the zone'' under the D/E rates measure, but pass the pCDR measure.

Rates Not Calculated

As under the 2011 Prior Rule, under proposed § 668.404(f), D/E rates would not be calculated for an award year if fewer than 30 students completed the program during an applicable cohort period or if SSA did not provide earnings information for the program. In such instances, the program would not receive D/E rates for the award year. In the 2011 Prior Rule, however, the program would be deemed to have satisfied the debt measures.

For pCDR, on the other hand, due to the availability of certain challenge and appeal options, there is no minimum program size that would prevent the Department from calculating the pCDR. Even a program with zero borrowers entering repayment would receive an

official pCDR of 0 percent and pass the measure. See ''§ 668.407 Calculating pCDR'' for more information on how pCDRs are calculated.

Reasons:

Background

The components of the proposed accountability framework that a program must satisfy to meet the gainful employment requirement are rooted in the legislative history of the predecessors to the statutory provisions of sections 101(b)(1), 102(b), 102(c), and 481(b) of the HEA that require institutions to establish the title IV, HEA program eligibility of gainful employment programs. 20 U.S.C. 1001(b)(1), 1002(b)(1)(A)(i), (c)(1)(A), 1088(b).

The legislative history of the statute preceding the HEA that first permitted students to obtain federally financed loans to enroll in programs that prepared them for gainful employment in recognized occupations demonstrates the conviction that the training offered by these programs should equip students to earn enough to repay their loans. *APSCU* v. *Duncan,* 870 F.Supp.2d at 139; see also 76 FR 34392. Allowing these students to borrow was expected to neither unduly burden the students nor pose ''a poor financial risk'' to taxpayers. 76 FR 34392. Specifically, the Senate Report accompanying the initial legislation (the National Vocational Student Loan Insurance Act (NVSLIA), Pub. L. 89–287) quotes extensively from testimony provided by University of Iowa professor Dr. Kenneth B. Hoyt, who testified on behalf of the American Personnel and Guidance Association. On this point, the Senate Report sets out Dr. Hoyt's questions and conclusions:

> Would these students be in a position to repay loans following their training? . . .
>
> *If loans were made to these kinds of students, is it likely that they could repay them following training? Would loan funds pay dividends in terms of benefits accruing from the training students received? It would seem that any discussion concerning this bill must address itself to these questions.* . . .
>
> We are currently completing a second-year followup of these students and expect these reported earnings to be even higher this year. *It seems evident that, in terms of this sample of students, sufficient numbers were working for sufficient wages so as to make the concept of student loans to be [repaid] following graduation a reasonable approach to take.* . . . I have found no reason to believe that such funds are not needed, *that their availability would be unjustified in terms of benefits accruing to both these students and to society in general, nor that they would represent a poor financial risk.*

Sen. Rep. No. 758, 89th Cong., First Sess. (1965) at 3745, 3748–49 (emphasis added).

Notably, both debt burden to the borrower and financial risk to taxpayers and the Government were clearly considered in authorizing federally backed student lending. Under the loan insurance program enacted in the NVSLIA, the specific potential loss to taxpayers of concern was the need to pay default claims to banks and other lenders if the borrowers defaulted on the loans. After its passage, the NVSLIA was merged into the HEA, which in title IV, part B, has both a direct Federal loan insurance component and a Federal reinsurance component, under which the Federal Government reimburses State and private non-profit loan guaranty agencies upon their payment of default claims. 20 U.S.C. 1071(a)(1). Under either HEA component, taxpayers and the Government assume the direct financial risk of default. 20 U.S.C. 1078(c) (Federal reinsurance for default claim payments), 20 U.S.C. 1080 (Federal insurance for default claims).

Not only did Congress consider expert assurances that vocational training would enable graduates to earn wages that would not pose a ''poor financial risk'' of default, but an expert observed that this conclusion rested on evidence that ''included both those who completed and those who failed to complete the training.'' *APSCU* v. *Duncan,* 870 F.Supp.2d at 139, *citing* H.R. Rep. No. 89–308, at 4 (1965), and S. Rep. No. 89–308, at 7, 1965 U.S.C.C.A.N. 3742, 3748.

The concerns regarding excessive student debt reflected in the legislative history of the gainful employment eligibility provisions of the HEA are as relevant now as they were then. Indeed, excessive student debt affects students and the country in three significant ways: payment burdens on the borrower; the cost of the loan subsidies to taxpayers; and the negative consequences of default (which affect borrowers and taxpayers).

The first consideration is payment burdens on the borrower. As we said previously in connection with the 2011 Prior Rule and restate here, loan payments that outweigh the benefits of the education and training for GE programs that purport to lead to jobs and good wages are an inefficient use of the borrower's resources. See 75 FR 43621.

The second consideration is taxpayer subsidies. As we said previously in connection with the 2011 Prior Rule and restate here, borrowers who have low incomes but high debt may reduce their payments through income-driven repayment plans. These plans can either be at little or no cost to taxpayers or, through loan cancellation, can cost taxpayers as much as the full amount of the loan with interest. 75 FR 43622. Deferments and repayment options are important protections for borrowers because, although postsecondary education generally brings higher earnings, there is no guarantee for the individual. Policies that assist those with high debt burdens are a critical form of insurance. However, these repayment options should not mean that institutions should increase the level of risk to the individual student or taxpayers through high-cost, low-value programs. See id.

The third consideration is default. The Federal Government covers the cost of defaults on Federal student loans. These costs can be significant to taxpayers. Id. And as we said previously in connection with the 2011 Prior Rule and restate here, loan defaults harm students and their families. Id. Their credit rating is damaged, undermining their ability to rent a house, get a mortgage, or purchase a car. To the extent they can get credit, they pay much higher interest. And, increasingly, employers consider credit records in their hiring decisions. 75 FR 43622. In addition, former students who default on Federal loans cannot receive additional title IV, HEA program funds for postsecondary education. Id.; see also section 484(a)(3) of the HEA, 20 U.S.C. 1091(a)(3).

In accordance with the legislative intent behind the gainful employment eligibility provisions now found in sections 101, 102, and 481 of the HEA and the significant policy concerns they reflect, we propose to use the certification requirements to establish a program's eligibility and, to assess continuing eligibility, the metrics-based standards that measure whether students will be able to pay back the educational debt they incur to enroll in the occupational training programs that are the subject of this rulemaking. 20 U.S.C. 1001(b)(1), 1002(b)(1)(A)(i), (c)(1)(A), 1088(b).

Certification Requirements

Under proposed §§ 668.403 and 668.414, institutions must certify through their program participation agreements that their GE programs meet all applicable accreditation and State and Federal licensing requirements to be eligible for title IV, HEA program funds. Through the certification requirements, institutions would be required to assess their programs to determine whether they meet these minimum required standards.

A program that cannot meet the basic certification requirements cannot be said to be preparing students for gainful employment in a recognized occupation. We believe that any student attending such a program would have a difficult time or be unable to secure employment in the occupation for which he or she received training and, consequently, would likely struggle to repay the debt incurred for enrolling in that program. The certification requirements are intended to help prevent such outcomes and are an appropriate condition that programs must meet to qualify for title IV, HEA program funds as they squarely address the debt repayment concerns underlying the gainful employment eligibility provisions of the HEA. As we have proposed that these certifications must be signed by an institution's most senior executive officer, we believe that institutions would make this self-assessment in good faith and after appropriate due diligence. The certification requirements are discussed in more detail in ''§ 668.414 Certification requirements for GE programs.''

The GE Measures

The debt-to-earnings measures under both the 2011 Prior Rule and the proposed regulations assess the debt burden incurred by students who completed a GE program in relation to their earnings. The pCDR measure, like the loan repayment rate in the 2011 Prior Rule, would assess the extent to which a program's borrowers are paying back their loans, whether or not they completed the program, by measuring the GE program's loan default rate.

Both the D/E rates measure and pCDR measure assess program outcomes that, consistent with legislative intent, indicate whether a program is preparing students for gainful employment. Although the measures supplement and complement one another, each focuses on separate and distinct expectations on which Congress relied in enacting legislation that make these programs eligible for title IV, HEA program funds based on the condition that they provide training that prepares students for gainful employment. Consequently, we believe the measures should operate independently.

Some negotiators questioned the proposed use of D/E rates and pCDR as independent eligibility measures. They suggested the accountability framework is inconsistent with the approach taken in the 2011 Prior Rule in which the debt measures, taken together, were designed to identify the worst performing programs. Our change in approach is a change not in overall objective, but in the manner in which we believe that objective is best accomplished.

The D/E rates and pCDR measures are designed to reflect and account for the three primary reasons that a program may fail to prepare students for gainful employment where former students are unable to earn wages adequate to manage their educational debt: (1) a program does not train students in the skills they need to obtain and maintain jobs in the occupation for which the program purports to train students, (2) a program provides training for an occupation for which low wages do not justify program costs, and (3) the program is experiencing a high number of withdrawals or ''churn'' because relatively large numbers of students enroll but few, or none, complete the program, which can often lead to default. See ''§ 668.413 Calculating, issuing, and challenging completion rates, withdrawal rates, repayment rates, median loan debt, and median earnings,'' for a more complete discussion of withdrawal rates and ''churn.''

The D/E rates measure assesses the outcomes of only those students who complete the program. The calculation includes former title IV, HEA program fund recipients who took on educational debt and recipients who did not. And, for those students who have debt, the D/E rates take into account private loans and institutional financing in addition to title IV, HEA program loans.

The D/E rates primarily assess whether the loan funds obtained by students ''pay dividends in terms of benefits accruing from the training students received,'' and whether such training has indeed equipped students to earn enough to repay their loans such that they are not unduly burdened. H.R. Rep. No. 89–308, at 4 (1956); S. Rep. No. 89–758, at 7 (1965). A 2002 survey found that a majority of borrowers felt burdened by their student loan payments and reported that they would borrow ''much less'' or a ''little less'' to finance their higher education if they were to enroll again in an educational program. An analysis of the 2002 survey combined borrowers' responses to questions about student loan burden, hardship, and regret to create a ''debt burden index'' that was significantly positively associated with borrowers' debt-to-income ratios; in other words, borrowers with higher debt-to-income ratios tended to feel higher levels of burden, hardship, and regret.[45] ''Burden'' and ''regret'' were significantly positively associated with one's debt-to-income ratio.[46]

As a result, the D/E rates measure identifies programs that fail to adequately provide students with the occupational skills needed to obtain employment or that train students for occupations with low demand and low wages. The D/E rates also provide evidence of the experience of borrowers and, specifically, where borrowers may be struggling with their debt burden.

In contrast to the D/E rates measure, pCDR measures the extent to which a program's former students are paying back their Direct and FFEL loans regardless of their earnings, if any. In comparison to the D/E rates measure, the pCDR measure applies to those programs that have relatively high enrollments but no or few completions such that students are left with debt they cannot repay. A substantial body of research suggests that ''completing a postsecondary program is the strongest single predictor of not defaulting regardless of institution type.'' [47]

The legislative history supports inclusion of students who did not complete a program in the proposed accountability framework. As discussed previously, Congress specifically considered expert advice that students who took out Federal loans for the purpose of training programs, including students who do not complete the programs, would be able to repay those loans, as defaults by those students would burden taxpayers in the same way as defaults by students who completed the program.

The pCDR, consequently, is foremost a measure that assesses whether a program presents a ''poor financial risk to the taxpayer.'' 76 FR 34392. In light of congressional intent reflected in the legislative history, a program that presents a poor financial risk for taxpayers cannot be considered a program that prepares students for gainful employment.

Despite the distinctive purposes of the D/E rates and pCDR measures, the measures supplement and complement one another. The scope of the pCDR measure is broader than the D/E rates measure as pCDR also takes into account the outcomes of borrowers who did not complete the program. Accordingly, the pCDR measure supplements the D/E rates in those cases in which D/E rates cannot be calculated

[45] Baum, S., and Schwartz, S. (2003). How Much Debt is Too Much? Defining Benchmarks for Managing Student Debt.

[46] Id.

[47] Gross, J. P., Cekic, O., Hossler, D., and Hillman, N. (2009). What Matters in Student Loan Default: A Review of the Research Literature. *Journal of Student Financial Aid,* 39(1), 19–29.

because no or very few students who enrolled in a program actually completed the program. By including an accountability metric that reflects the outcomes of students who do not complete the program, institutions would have incentive to address any high dropout and ''churn'' issues or face the loss of eligibility.

Likewise, the D/E rates measure complements the pCDR measure. Specifically, the pCDR measure does not take into account the many students who may be struggling to repay their loans, such as those receiving economic hardship deferments or who are in an income-driven repayment plan. These students may see their loans grow, rather than shrink, because their incomes are low and their debts are high. While the pCDR measure may not identify programs whose former students are in such circumstances, the D/E rates measure would take into account those students who are struggling with their debt burden despite having completed their programs.

Although we have proposed the pCDR measure to assess the outcomes of all students who attend a program, both students who complete the program and those who do not, we invite comment as to whether the D/E rates measure should also consider the outcomes of students who do not complete the program, in addition to those who do. We ask commenters to provide information, studies, and data to support their comments.

D/E Rates

The proposed regulations would include the same two debt-to-earnings measures as the 2011 Prior Rule. Under the proposed regulations, the first D/E rate, the discretionary income rate, measures the proportion of annual discretionary income—the amount of income above 150 percent of the Poverty Guideline for a single person in the continental United States—that students who complete the program are devoting to annual debt payments. The Department also proposes a second rate, the annual earnings rate, which measures the proportion of annual earnings that students who complete the program are devoting to annual debt payments. A program would pass the D/E rates measure by meeting the standards of either of the two metrics, the discretionary income rate or the annual earnings rate. For an explanation of the methodology that would be used to calculate the D/E rates, see ''§ 668.404 Calculating D/E rates.''

The proposed passing thresholds for the discretionary income rate and the annual earnings rate are based upon mortgage industry practices and expert recommendations. The passing threshold for the discretionary income rate is set at 20 percent, based on research conducted by economists Sandy Baum and Saul Schwartz, which the Department previously considered in connection with the 2011 Prior Rule.[48] Specifically, Baum and Schwartz proposed benchmarks for manageable debt levels at 20 percent of discretionary income. Such benchmarks would ensure that low income borrowers have no repayment obligations and that no borrower would ever have repayment obligations that exceeded 20 percent of their income, a level they found to be unreasonable under virtually all circumstances.[49] The passing threshold of 8 percent for the annual earnings rate used in the proposed regulations has been a fairly common mortgage-underwriting standard, as many lenders typically recommend that all non-mortgage loan installments not exceed 8 percent of the borrower's pretax income.[50] Studies of student debt have accepted the 8 percent standard and some State agencies have established guidelines based on this limit. Eight percent represents the difference between the typical ratios used by lenders for the limit of total debt service payments to pretax income, 36 percent, and housing payments to pretax income, 28 percent.[51]

In the 2011 Prior Rule, the passing thresholds for the debt-to-earnings ratios were based on the same expert recommendations and industry practice, but were increased by 50 percent to 30 percent for the discretionary income rate and 12 percent for the annual earnings rate to identify the lowest-performing GE programs and to build in a tolerance. 76 FR 34400.

Upon further consideration of this issue and analysis of the GE Data, we believe that the stated objectives of the 2011 Prior Rule to identify the worst performing programs and build a ''tolerance'' into the thresholds are better achieved by setting 30 percent for the discretionary income rate and 12 percent for the annual earnings rate as the upper boundaries for a zone rather than as the passing thresholds. For the following reasons, adopting this approach is consistent with the Department's objectives in this rulemaking of identifying poorly performing programs, and providing institutions time, particularly in the initial years of the proposed regulations, to improve their programs.

First, the proposed regulations would still identify the lowest performing programs, those with a discretionary income rate greater than 30 percent and an annual earnings rate greater than 12 percent, by categorizing them as failing. Whereas the 2011 Prior Rule provided that a program would be ineligible if it had failing rates for three out of any four consecutive years, under the proposed regulations, a GE program that fails the D/E rates measure in two out of any three consecutive years would become ineligible. This reflects the Department's view in the prior rulemaking, as well as here, that any program with D/E rates above a 30 percent discretionary income rate or a 12 percent annual earnings rate is producing very poor outcomes for its students and should, in order to minimize the program's negative impact on students, be given only limited time before it loses its eligibility.

Because of the previous rulemaking and the release of the 2011 GE informational rates in June 2012, we believe many institutions have had relevant information for a sufficient amount of time to assess their programs and make improvements, particularly by reducing costs. As discussed in more detail below, the proposed four-year transition period would take into consideration these improvements. Even where institutions have not taken action, or in cases where programs were not included in the 2011 GE informational rates, the transition period would still account for any immediate reductions in costs that institutions make in response to the proposed regulations. For a more detailed explanation of the transition period, see ''§ 668.404 Calculating D/E rates.'' Accordingly, less time to ineligibility for failing programs is merited in comparison to the 2011 Prior Rule.

Second, we propose setting the passing thresholds at 20 percent for the discretionary income rate and 8 percent for the annual earnings rate, which are what experts and industry practice deem to be the outside limit of

[48] Baum, S., and Schwartz, S. (2006). How Much Debt is Too Much? Defining Benchmarks for Managing Student Debt. See also S. Baum, ''Gainful Employment,'' posting to The Chronicle of Higher Education, *http://chronicle.com/blogs/innovations/gainful-employment/26770*, in which Baum described the 2006 study:

This paper traced the history of the long-time rule of thumb that students who had to pay more than 8% of their incomes for student loans might face difficulties and looked for better guidelines. It concluded that manageable payment-to-income ratios increase with incomes, but that no former student should have to pay more than 20% of their discretionary income for all student loans from all sources.

[49] Id.

[50] Id. at 2–3.

[51] Id.

acceptable debt burden. As stated above, Baum and Schwarz concluded that the ratio of discretionary income to debt should never exceed 17 to 20 percent.[52] Similarly, the 8 percent threshold for the annual earnings rate is based on the credit underwriting industry's judgment of the outside limit of all non-mortgage debt. Although not among the very worst performers, programs with D/E rates exceeding the 20 percent and 8 percent thresholds still exhibit poor outcomes and unacceptable debt levels. Eventual ineligibility for these programs is appropriate if they do not make improvements that will be reflected in their D/E rates.

Our analysis of the 2012 GE informational rates indicates that the stricter thresholds would more effectively identify poorly performing programs. The average earnings of students who completed programs evaluated by the Department with a discretionary income rate or an annual earnings rate in between the passing thresholds of the proposed regulations and the 2011 Prior Rule, 20–30 percent and 8–12 percent, respectively, is under $18,000.[53] Under the thresholds of the 2011 Prior Rule, a zone program would pass the D/E rates measure, even though its graduates could be devoting up to almost $2,200, or 12 percent, of their $18,000 in annual earnings toward student loan payments. We believe it would be very difficult for an individual earning $18,000 to manage that level of debt. That 25 percent of borrowers from zone programs evaluated by the Department default on their Federal student loans within the first three years of entering repayment lends support to this conclusion.[54] In comparison, the average default rate of programs evaluated by the Department that would pass the D/E rates measure under the proposed regulations is 19 percent.[55] These results indicate that students who complete zone programs have very different outcomes than students who complete passing programs. These programs, accordingly, should not be treated the same.

Third, because programs in the zone are not among the very worst, they have a greater potential to raise their performance to passing levels than programs with poorer outcomes. We believe they should be afforded an opportunity to do so. For this reason, the proposed regulations include a four-year zone and allow for a transition period to allow zone programs more time than failing programs to improve before being made ineligible. Because institutions have the ability to impact the debt that their students accumulate by lowering tuition and fees, which the transitional D/E rates calculations would take into account, we believe it is possible for zone programs to improve. If institutions do not make improvements to these programs, they would be made ineligible just as failing programs, because, as deemed by experts and industry practice and supported by our own data analysis, both groups of programs are leaving their students with unacceptable debt burdens in comparison to their incomes.

As discussed under ''§ 668.404 Calculating D/E rates,'' the proposed regulations would allow for a transition period for the first four years after the final regulations become effective. During the transition period, an alternative D/E rates calculation would be made so that institutions could benefit from any immediate reductions in cost they make. During these four years, the transition period and zone together would allow institutions to make improvements to their programs in order to become passing. Institutions that lower tuition and fees sufficiently at the outset of the transition period could move failing programs into the zone in order to avoid ineligibility. These institutions would then have additional transition and zone years to continue to improve their programs and make them passing. During this period, the Department would also provide to institutions their results under the regular D/E rates calculation so that they could measure the amount of cost reduction they would need to make in order for their programs to pass once the transition period concludes.

After the conclusion of the transition period, the overall accountability and transparency framework of the proposed regulations, including the zone, should motivate continuous improvement by institutions. If institutions begin reducing costs and improving quality at the start of the transition period, and sustain those efforts after the transition period, a program that falls in the zone in the future would benefit from the four-year time period because consistent improvements would be reflected in the program's D/E rates on an ongoing basis.

Fourth, a four-year zone provides a buffer to account for statistical imprecision due to random year-to-year variations, virtually eliminating the possibility that a program would mistakenly be found ineligible on the basis of D/E rates for students who completed the program in any one year. As demonstrated below by the Department's analysis of the 2012 GE informational rates, given the extreme unlikelihood that an unrepresentative population of students who completed the program could occur in four out of four consecutive years, that is, that a program's D/E rates exceed the 8 percent and 20 percent thresholds four years in a row when in fact its D/E rates are on average less than 8 percent and 20 percent for a typical year, there is no need to build in a tolerance by adjusting the thresholds at the expense of holding all poorly performing programs accountable as was done in the 2011 Prior Rule because the zone provides that tolerance. In other words, we believe the zone accounts for statistical imprecision while still holding all poorly performing programs accountable over time.

The findings of our statistical analysis are discussed in the following paragraphs. For demonstrative purposes, the probabilities provided below are for the annual earnings rate because our analysis indicates that, of programs that would pass the D/E rates, the substantial majority would pass this measure. Our analysis assumes that the observed annual earnings rates of passing programs reasonably approximate the true distribution of passing annual earnings rates. Note also that, although we have proposed an ''n-size'' of 30 in the proposed regulations, we have also invited comment on an n-size of 10. See ''§ 668.404 Calculating D/E rates.'' Accordingly, our analysis assessed the statistical precision of the measure using both an n-size of 30 and an n-size of 10.

If the minimum number of students completing a program (''n-size'') necessary to calculate the program's D/E rates is set at 30, as is the case in the proposed regulations, the expected or average probability that a passing program would be mischaracterized as a zone program in a single year is no more than 2.7 percent. Because this is an average across all programs with passing D/E rates, it is important to note that the probability is lower the farther a program is from the passing threshold and higher for programs with D/E rates closer to the passing threshold. At an n-size of 10, the probability that a passing program would be mischaracterized as a zone program in a single year would be no more than 6.7 percent.

Because no program would be found ineligible after just a single year, it is important to look at the statistical precision analysis across multiple years. These probabilities drop significantly for both an n-size of 30 and 10 when

[52] Baum, S., and Schwartz, S. (2003). How Much Debt is Too Much? Defining Benchmarks for Managing Student Debt.

[53] 2012 GE informational rates.

[54] Id.

[55] Id.

looking across the four years that a program could be in the zone before becoming ineligible. The average probability of a passing program becoming ineligible as a result of being mischaracterized as a zone program for four consecutive years at an n-size of 30 is close to 0 percent. At an n-size of 10, the average probability is no more than 1.4 percent.

Setting the failing D/E rates thresholds at 30 percent for the discretionary income rate and 12 percent for the annual earnings rate also virtually eliminates the probability of a passing program losing eligibility because of being mischaracterized as failing at either n-size.

The probability of a passing program being mischaracterized as a failing program in a single year at an n-size of 30 is close to 0 percent. At an n-size of 10, the probability is no more than 0.7 percent. Although we know that these are the upper limits of the probabilities of a passing program being mischaracterized as failing, it is likely that the probabilities are lower when taken across the two years of failures required for a program to become ineligible. We are unable to provide more precise probabilities for the scenario of failing two out three years due to limitations in our data.[56]

Other aspects of the D/E rates measure in the proposed regulations also reduce the probability of a program becoming a failing or ineligible program in error. As a general matter, both the debt and earnings components of the discretionary income rate and annual earnings rate calculations are calculated as means or medians, which, as measures of central tendency, account for outliers. And as stated previously, both passing thresholds are set at the very outside limits of the recommendations from which they are drawn, resulting in a ''built-in'' buffer.

Although we propose to use the same D/E rates measure for the purpose of determining program eligibility as in the 2011 Prior Rule but with stricter passing thresholds and a zone category, we seek comment on whether the passing thresholds used in the 2011 Prior Rule—12 percent for the annual earnings rate and 30 percent for the discretionary income rate—should be adopted instead. We strongly urge commenters to provide supporting data or studies that the Department can use in evaluating regulatory alternatives.

pCDR

To assess the repayment performance of former students, we propose to use a different method than the loan repayment rate measure in the 2011 Prior Rule: the percentage of those students who default within a defined period, which we refer to as the program cohort default rate or pCDR.

In the 2011 Prior Rule, to assess repayment performance, the Department used the loan repayment rate measure in § 668.7(b), which measured the extent to which students who borrowed to enroll in a GE program were repaying their loans. In proposing the loan repayment rate measure, the Department explained that the measure was designed to protect the taxpayer as well as the borrower from exposure to default: ''This concern—protecting the taxpayer—motivates the repayment rate measure, which indicates the taxpayer's exposure to delayed repayment *or default*.'' 75 FR 43622 (emphasis added). The Department adopted in § 668.7(a)(2) and (b) of the 2011 Prior Rule a minimum threshold of 35 percent as the percentage of loan amount borrowed by former students that those borrowers had actually repaid, through the recent fiscal year, at a rate that reduced the ''outstanding balance'' owed. That threshold was adopted to identify ''the approximately one-quarter of programs where 65 percent of the former students attempting to repay their loans were nonetheless seeing their loan balances grow.'' 73 FR 34395.

In *APSCU* v. *Duncan,* the court found that the Department had not provided a ''reasoned explanation'' for the 35 percent threshold other than that it would identify the worst-performing quartile, *APSCU* v. *Duncan,* 870 F.Supp.2d at 154, and vacated that portion of the regulations. Nevertheless, we continue to consider loan repayment performance of a GE program's former students to be relevant evidence of whether a program meets the gainful employment requirement. Unlike with the debt-to-earnings rates, however, the Department has found no expert studies or industry practice that would provide the kind of factual support for identifying a particular loan repayment rate as an appropriate threshold for determining whether a program prepares students for gainful employment, nor has it found alternative support or arguments in support of a threshold.

Instead, we seek to measure the loan repayment performance based on the proposed pCDR accountability metric, which is modeled after the cohort default rate metric that is currently used to determine institutional eligibility to participate in title IV, HEA programs (institutional CDR or iCDR). Specifically, we propose to use pCDR as a measure, independent of the D/E rates measure, to determine the continuing title IV, HEA eligibility of a GE program. To determine whether a program is failing, the Department would use the same threshold as is used to disqualify institutions from the title IV, HEA programs. 20 U.S.C. 1085(m). A program would be failing the pCDR measure if it had a pCDR of 30 percent or greater.

Because the HEA sets the standard for when an institution loses eligibility under the iCDR provisions, we consider that congressional determination—three consecutive fiscal years of an iCDR of 30 percent or greater—to provide compelling support for use of the identical standard to assess the eligibility of a GE program. Because every institution is the sum of its programs, the iCDR is simply the aggregate outcome of the default performance of students from all of its programs.

The legislative history of the HEA provisions that impose the iCDR eligibility test do not appear to discuss the rationale for any of the specific threshold rates Congress chose to use between 1990 (30 percent) and the present (also 30 percent). The legislative history does show, however, that Congress has closely attended to calibrating the iCDR test and its effect on institutions, as evidenced by numerous and regular amendments. These amendments made significant changes to the iCDR rule over the years: they changed the rates themselves, exempted various classes of institutions from the test, expanded and refined the grounds on which institutions could appeal a loss of eligibility, denied eligibility for Pell Grants to those institutions that lost eligibility on CDR grounds, and, most recently, expanded the period during which defaults were held against the institution from the two-year period adopted in 1990 to three years.[57] This history amply

[56] We are unable to provide more precise probabilities for the scenario of a program that fails the D/E rates measure in two out of three years. Because some students are common to consecutive two-year cohort periods for the D/E rates calculations, we cannot rely on the assumption that each year's D/E rates are statistically independent from the previous and subsequent year's D/E rates. Without the assumption of independence between years, there is no widely accepted method for calculating the probability of a program failing the D/E rates measure in two out of three years.

[57] The earliest legislation to use cohort default rate was Public Law 101–239, section 2003(a), Dec. 19, 1989, 103 Stat 2106, 2120, which made an institution with a single year CDR of 30 percent or more ineligible for Supplemental Loans for Students, a FFELP loan authorized under section 428A as in effect at the time, and added subsection (m) to section 435 of the HEA to define the term cohort default rate. This followed the Department's June 5, 1989, adoption of regulations that made an

Continued

demonstrates that the current iCDR rate, which is incorporated into the proposed regulations at the program level, reflects Congress's experiences and careful deliberation over the years.

Thus, we consider it reasonable to rely on the 30 percent standard adopted by Congress. We have found no analytical criticism of the 30 percent standard. Given the unique characteristics of the Federal student loan program, such as the lack of any creditworthiness test, we propose to rely on the well-established standard deliberated and adopted by Congress.

Moreover, this standard has been applied on a program-level basis for many years, as there are a number of institutions offering only one eligible program that are evaluated on whether that one program's default rate is meeting the 30 percent threshold established by Congress. In other words, in those cases, the iCDR measure is effectively already used as a program-level CDR measure.

In connection with the negotiated rulemaking process for the 2011 Prior Rule, several commenters suggested that the Department use institutional CDR as a measure of whether a program prepares students for gainful employment. The Department declined to do so, stating that ''an *institution's* average [cohort default rate] does not measure the effect of any individual program.'' 76 FR 34386, 34387 (June 11, 2011) (emphasis added). The *institutional* CDR ''may mask an underperforming program . . . [and] may therefore be a misleading measure of an *individual program's* success in providing students with sufficient income to pay off educational loan debt.'' 76 FR 34411 (emphasis added). Notably, these arguments apply only to the use of iCDR to measure whether individual programs produce excessive debt burdens. The Department did not consider applying the iCDR methodology to assess the default performance of individual programs, as we now propose. Further, at that time, the Department's proposal already included a metric to measure loan repayment performance—the loan repayment rate.

We continue to believe that iCDR itself is not a useful measure in determining whether a program prepares students for gainful employment in a recognized occupation (except for institutions offering only one eligible program). Although a passing iCDR indicates that an institution is, on average, across programs, producing an acceptable number of students that are able to pay their loans, iCDR does not measure individual GE program performance and, therefore, does not provide the information that would be most useful to prospective students and their families considering a particular program. For students who find themselves in a GE program that is leaving its students with unmanageable debt, the fact that an institution has other programs that are producing better student outcomes is of limited utility. When applied at the program level, however, we believe a cohort default rate is a valuable measure of GE program performance. We also expect the implementation of pCDR as a GE measure would have a similar effect on the cohort default rates at a program level as did iCDR on the institutional level. 76 FR 34484. That is, when iCDR was introduced there was an initial elimination of the worst-performing programs followed by a new equilibrium in which programs complied with the minimum standards in the regulations. Id.

Proposed new subpart R would establish the procedures and methodology that would be applied to determine a GE program's pCDR. Subpart R is virtually identical to subpart N of part 668, which establishes the procedures and methodology used to determine iCDR. We have drafted proposed subpart R to follow the text and procedures in subpart N in order to assist institutions already familiar with the iCDR process to understand the pCDR procedures and methodology. Provisions of subpart N that are not relevant to pCDR determinations or are not adopted for pCDR purposes have been reserved in subpart R.

The major difference between iCDR and our proposed use of pCDR is that, in the proposed regulations, we would adopt only the statutory CDR threshold for loss of eligibility (rates of 30 percent or greater for three consecutive fiscal years), and would not adopt the additional regulatory provision under which an institution loses eligibility if it has an iCDR greater than 40 percent in a single fiscal year. This is consistent with our overall approach to allow institutions time to improve their programs so that a program would not lose eligibility after only a single year of failure to meet a GE measure.

For the pCDR measure, we propose no counterpart to the zone or the transition period used for the D/E rates measure. There are no equivalent provisions in the iCDR framework. However, we note that because institutions have been subject to the iCDR standards for many years, we do not believe that there is a similar need for a zone or a transition period in connection with the pCDR measure.

Under the proposed regulations, we would replicate the iCDR determination process for the purpose of determining pCDR. Thus, the same procedures and methodology used in calculating cohort default rates for institutions under section 435 of the HEA, 20 U.S.C. 1085, and Department regulations would largely apply to the calculation of pCDR. For example, the proposed regulations would mirror regulations contained in subpart R that address the calculation of cohort default rates for institutions with few borrowers entering repayment, § 668.202(a)(2) (calculation of rate when fewer than 30 borrowers enter repayment in a fiscal year).

The proposed regulations would also provide an institution with the same challenges and appeals for the pCDR determination as are provided for the iCDR determination. We believe that institutions are familiar with these challenges and appeals and can readily use them in connection with pCDR determinations.

We propose to exclude from subpart R provisions of 34 CFR part 668, subpart N, that address matters that are not necessary components of the rate determination process itself, such as § 668.204(c)(1)(iii) (affecting administrative capability of the institution under § 668.16(m)), or do not readily apply to program-level rates, such as § 668.203 (calculation of CDR

institution with a single-year CDR of 40 percent or greater subject to termination of eligibility. 34 CFR 668.15 (1990), 54 FR 24114 (June 5, 1989). The three-year CDR test structure was adopted shortly thereafter by Pub. L. 101–508, section 3004, Nov. 5, 1990, 104 Stat. 1388–26, which amended section 435(a) of the HEA to adopt the three-year CDR test in effect ever since; to set the CDR rate thresholds at 35 percent for FY 1991 and 1992, and 30 percent for FY 1993 and subsequent fiscal years; and to exempt until 1994 historically black colleges and universities and tribally controlled colleges and universities, as identified by the Tribally Controlled Community College Assistance Act and the Navajo Community College Act from the cohort default rate thresholds. 20 U.S.C. 1085(a)(2)(B), (C). (This exemption was extended several times and ultimately ended in 1999.) Congress revised the CDR thresholds in 1992 amendments, reducing the threshold to 25 percent for fiscal years beginning in 1994. Pub. L. 102–325, section 427, 106 Stat 448, July 23, 1992. Congress substantially revised the appeal options in 1993 to allow challenges to loss of eligibility based on improper servicing, Pub. L. 103–208, section 2(c)(55), Dec. 20, 1993, 107 Stat 2457. Appeal options were further expanded in 1998 to permit appeals based on ''mitigating circumstances,'' including low borrowing and high placement rates for GE programs, and disqualifying from Pell Grant eligibility those institutions that fail the CDR test. Pub. L. 105–244, sections 401, 429, Oct. 7, 1998, 112 Stat. 1704 to 1709. Most recently, Congress extended the period during which defaults would be assessed from the two-year period under prior law to a three fiscal year period and changed the CDR threshold back to 30 percent for fiscal years beginning in 2012, the first year in which the three-year period would apply. Pub. L. 110–315, section 436, 102 Stat 3258.

for institutions or locations that undergo a change in ownership).

We have considered each provision of subpart N to determine its applicability to pCDR and believe that a cohort default rate, calculated under the specific procedures and methodology adopted from iCDR, is a valuable and reasonable metric at the program level for the reasons explained above.

During the negotiation sessions, several non-Federal negotiators suggested that pCDR would be an inadequate measure of whether a program prepares students for gainful employment. These negotiators believed that the iCDR methodology does not capture the extent to which borrowers facing an excessive debt burden can, by various deferments and forbearances, temporarily avoid the adverse consequence of that debt burden, only to default after the three-year period during which the CDR tracks defaults. They were concerned that institutions would encourage students to enter forbearance or deferment in order to evade the consequences of the pCDR measure and urged the Department to modify the existing iCDR methodology to disregard these non-payors when calculating pCDR.

We acknowledge that cohort default rates do not take into account students who are receiving deferments or forbearances, or who may be paying much less or even nothing as a result of repaying under an income-driven repayment plan, but we are not inclined to make a change that would cause the proposed pCDR requirements to differ so significantly from the institutional CDR requirements. Although we are concerned about the manipulation of cohort default rates through the deferments, forbearances, and income-driven repayment plans identified by some negotiators, we believe that pCDR should be consistent with iCDR to avoid conflicting results. For example, if we accepted the negotiators' proposal to adopt, but modify, the iCDR provisions for purposes of pCDR to address the concern presented, an institution with only one program could be determined to be an eligible institution with respect to its one program under iCDR, but that program could be determined to be ineligible under the proposed pCDR provision. The Department wishes to avoid such contrary consequences.

During the negotiations, we encouraged the negotiators to submit proposals for alternative methods of assessing loan repayment and the corresponding thresholds, together with the kind of evidence or analysis that the Department would need to pursue a different approach to assessing repayment. Negotiators responded to this request with proposals that included using completion rates, placement rates, and repayment rates as alternative eligibility measures. However, we received no proposals with a level of support sufficient for rulemaking. We believe section 435 of the HEA, 20 U.S.C. 1085, provides such support for the pCDR measure, and explain above why application of the cohort default rate at a program level is reasonable.

Negotiators also provided responses on a proposal the Department made at the second negotiation session to evaluate loan repayment performance based on whether the program's loan portfolio was negatively amortized. As we explained at the third session, we were unable to draw conclusions from the data available at the time on the negative amortization proposal. Accordingly, we have not pursued this proposal further.

Other negotiators strongly objected to the proposal not to adopt, for the purpose of pCDR as an eligibility measure, the iCDR regulatory provision that results in the termination of an institution's eligibility after one fiscal year iCDR of greater than 40 percent. 34 CFR 668.206(a)(1). The negotiators were concerned that a program that may be one of the worst performers would remain eligible for perhaps two more years, harming more students in the interim. However, as explained earlier, we propose to adopt an accountability framework that does not result in ineligibility based on just one year of poor performance. Adopting a provision that would make a program ineligible after one year of failure would not be consistent with that intention. For a program that fails the pCDR measure, an institution can make efforts to assist subsequent cohorts of borrowers entering repayment with managing their debt burdens to lower the rates of default and, over the long term, can reduce debt burden altogether by lowering costs.

Some negotiators questioned whether the iCDR methodology would effectively address situations in which a program has a small number of borrowers, and whether such lesser numbers might result in volatility of rates. We responded, and repeat here, that the iCDR process, as established by statute and as refined by regulation, explicitly addresses the manner in which rates are calculated for institutions with a small number of borrowers entering repayment, in ways that mitigate volatility that may arise from small numbers. Indeed, section 435(m)(3) of the HEA, 20 U.S.C. 1085(m)(3), explicitly provides that when fewer than 30 borrowers enter repayment in a fiscal year, the iCDR of that institution for that year is based on those students who entered repayment in that fiscal year and the preceding two fiscal years. § 668.202(d)(2). Proposed § 668.502(d)(2) would adopt the same rule. In addition, § 668.216 provides that an institution does not lose eligibility regardless of its iCDR if the total number of students entering repayment for the three-year period is fewer than 30. We include the same exception for pCDR in proposed § 668.516. Years of experience under these regulations have produced no evidence of volatility of institutional CDRs, and we see no basis for concern that the same rules applied to pCDR would pose such a risk.

Negotiators who expressed concern about the burden posed for programs with low rates of borrowing also objected to adopting for pCDR the same ''participation rate'' challenge available for iCDR. Under this participation rate challenge and appeal option in § 668.214, an institution subject to a loss of eligibility could avoid that loss by demonstrating that the percentage of students who borrow is sufficiently low that, when that percentage of students is multiplied by the iCDR for any of the three years for which its iCDR was 30 percent or greater, the product is less than 0.0625. An institution can assert this claim at two points in the process: First, under § 668.204(c)(1)(ii), when the draft iCDR that would constitute the third-year rate of 30 percent or greater is issued, and, second, under § 668.214, when that third-year iCDR is issued as the official iCDR. The negotiator contended that the Department should allow an institution to challenge a pCDR based on a participation rate challenge or appeal when the first pCDR of 30 percent or greater is issued, and not require the institution to wait until the third such rate is issued. For the reasons we have already stated, we believe there should be consistency between the iCDR and pCDR calculations.

We seek comment on whether there are other measures we should consider that would further the Department's stated policy goals. We restate our interest in ensuring the viability of the regulations through measures and thresholds that rest on a solid and well-reasoned basis and request that commenters submit supporting rationale, studies, and data for their proposals. We invite comment, however, on whether it may be possible to accomplish the intended goals of the GE measures without establishing a two-metric eligibility framework or whether

there are other measures that should be considered.

Rates Not Calculated

If the minimum number of required students for the D/E rates to be calculated is not met or if SSA does not provide earnings information for the calculation of a program's D/E rates, the D/E rates would not be calculated and the program would not receive rates for the award year. We believe it is logical to disregard a year for which the D/E rates are not calculated for the purpose of determining eligibility under the D/E rates (as explained previously, pCDR would always be calculated). For example, if a program failed the D/E rates measure in year 1, did not receive rates in year 2, passed the D/E rates measure in year 3, and failed the D/E rates measure in year 4, that program would be deemed ineligible after year 4 because it failed the D/E rates measure in two out of three consecutive years for which D/E rates were calculated. This approach would avoid simply allowing a program to pass the D/E rates measure when an insufficient number of students complete the program.

In contrast, under the 2011 Prior Rule, a program would be deemed to have ''satisfied'' the debt measures if one of the debt measures could not be calculated. Since the 2011 Prior Rule provided that a program would satisfy the debt measures if it passed either of the debt-to-earnings ratios or the loan repayment rate, it would not have been appropriate to evaluate a program without results on all of the measures. That is not the case in the proposed regulations, as the D/E rates and pCDR measures would operate as independent measures.

We seek comment on the appropriate number of consecutive ''no rate'' years under the proposed regulations after which a program's zone or failing results should reset. As proposed, a program would become ineligible after failing the D/E rates measure in two out of any three consecutive years for which D/E rates are calculated. However, we seek comment as to whether this should apply where a significant period of time has passed between results. For example, as proposed, a program that failed the D/E rates measure for award year 2014–2015, and had no D/E rates calculated for the next five award years (2015–2016 through 2019–2020), would lose eligibility if it failed the D/E rates measure for 2021–2022. This pattern may indicate that the program was and remains a failing program, with the intervening years showing no evidence of successful outcomes. On the other hand, if the program had actually failed the D/E rates measure in two consecutive award years (e.g., 2014–2015 and 2015–2016), that program could potentially regain eligibility in 2020 (three years after the date on which the program lost eligibility).

Section 668.404 Calculating D/E rates

Current Regulations: Under section 668.7(c) of the 2011 Prior Rule, two debt-to-earnings ratios, the annual earnings rate and the discretionary income rate, would be calculated each fiscal year for GE programs using the following formulas:

$$\text{Discretionary income rate} = \frac{\text{annual loan payment}}{\text{discretionary income}}$$

$$\text{Annual earnings rate} = \frac{\text{annual loan payment}}{\text{annual earnings}}$$

Both ratios would be calculated based on the debt and earnings outcomes of students who completed the program during an applicable cohort period. These students would include both those who received title IV, HEA program funds and those who did not.

For both ratios, the annual loan payment would be calculated by determining the median loan debt of students completing the program during the applicable cohort period and amortizing that median debt amount over a 10-, 15-, or 20-year repayment period depending on the credential level of the program, using the interest rate on Federal Direct Unsubsidized Loans at the time of the calculation. Loan debt would include FFEL and Direct Loans (except PLUS Loans made to parents or Direct Unsubsidized loans that were converted from TEACH Grants), private education loans, and institutional loans that a student received for attendance in the program. In cases where students completed multiple programs at the same institution, all loan debt would be attributed to the highest credentialed program that the student completed. Also excluded from the calculations would be students whose title IV, HEA loans were in military deferment, whose title IV, HEA loans were discharged, or being considered for discharge, because of disability, who were enrolled at an institution of higher education for any amount of time in the same calendar year that earnings are measured for the D/E rates, or who died. Loan debt incurred by the student for enrollment in a GE program at another institution would generally not be included. However, the Secretary could choose to include this debt if the institution and the other institution were under common ownership or control, as determined under 34 CFR 600.31. The loan debt associated with a student would be capped at an amount equivalent to the program's tuition and fees if tuition and fees information was provided by the institution, as such reporting would be optional, and if the amount of tuition and fees was less than the student's loan debt.

The discretionary income rate denominator would be the higher of the SSA-provided mean or median earnings minus 150 percent of the Poverty Guideline for a single person residing in the continental United States as published by the U.S. Department of Health and Human Services. The denominator of the annual earnings rate would be the higher of the mean or median earnings of the students for the most currently available calendar year, as obtained from SSA or another Federal agency.

The 2011 Prior Rule would require at least 30 students to have completed the program during an applicable cohort period for the debt-to-earnings ratios to be calculated. If, after applying the exclusions, 30 or more students completed the program during the two-year period comprised of the third and fourth fiscal years prior to the fiscal year for which the calculations are made (referred to in the 2011 Prior Rule as the ''2YP''), then the applicable cohort period would be the 2YP. If fewer than 30 students completed the program during the 2YP, then a four-year period comprised of the third, fourth, fifth, and sixth fiscal years prior to the fiscal year

for which the calculations are made (referred to in the 2011 Prior Rule as the ''4YP'') would be evaluated. If, after applying the exclusions, fewer than 30 students completed the program during the 4YP, ratios would not be calculated and the program would be considered to satisfy the debt measures. Ratios would also not be calculated if SSA did not provide the mean and median earnings for the program or the median loan debt of the program is zero. In both cases, the program would be considered to satisfy the debt measures.

Section 668.7(k) of the 2011 Prior Rule would have set, in the first year that programs could become ineligible, for each institutional category (public, private non-profit, proprietary), a cap on the number of ineligible programs, such that the number of ineligible programs would not account for more than 5 percent of the total number of students who completed GE programs in that institutional category. Further, for the first three years that the 2011 Prior Rule would be effective, for programs failing the debt-to-earnings ratios, institutions could recalculate and appeal their results under the ratios using earnings data from the Bureau of Labor Statistics (BLS) to replace SSA earnings data. See ''§ 668.406 *D/E rates alternate earnings appeals and showings of mitigating circumstances*'' for more detail on the BLS data-based appeal under the 2011 Prior Rule.

Proposed Regulations: Under proposed § 668.404(a) the Department would calculate the same two debt-to-earnings ratios for GE programs as in the 2011 Prior Rule: a discretionary income rate and an annual earnings rate (referred to in the 2011 Prior Rule as the ''earnings rate''). Unlike the 2011 Prior Rule, under which D/E rates are calculated on a fiscal year basis, the proposed regulations would calculate the D/E rates on an award year basis. An award year begins on July 1 and ends on June 30 of the following year whereas a fiscal year begins on October 1 and ends on September 30 of the following year. Both D/E rates would be calculated at the program level based on the debt and earnings outcomes of students who completed the program during an ''applicable cohort period'' as discussed in more detail below. Unlike the 2011 Prior Rule, the D/E rates would be based only on the outcomes of students receiving title IV, HEA program funds. But, as with the 2011 Prior Rule, students receiving title IV, HEA program funds would include students who received title IV, HEA program loans and those who received only Pell grants or other grants but no loans. See ''§ 668.401 Scope and purpose'' for a more detailed discussion of the definition of ''student'' in the proposed regulations.

Exclusions

A student would be excluded from the D/E rates calculations for a GE program if (1) one or more of the student's title IV loans were in a military-related deferment at any time during the same calendar year that earnings are measured for the D/E rates, (2) one or more of the student's title IV loans are under consideration by the Department, or have been approved, for a discharge on the basis of the student's total and permanent disability, under 34 CFR 674.61 (Perkins), 682.402 (FFEL), or 685.212 (Direct Loans), (3) the student was enrolled in another eligible program at the same institution or at another institution during the same calendar year that earnings are measured for the D/E rates, (4) if the program is an undergraduate program, the student subsequently completed a higher credentialed undergraduate GE program at the same institution, or, if the program is a post-baccalaureate, graduate certificate, or graduate degree GE program, the student subsequently completed a higher credentialed graduate GE program at the same institution, or (5) the student died. These exclusions are the same as those in the 2011 Prior Rule with the addition of an exclusion for students completing a higher credentialed GE program at the same institution.

Applicable Cohort Period and Minimum Number of Students Completing the Program

As stated previously, the calculations for both D/E rates would be based on the debt and earnings outcomes of students who completed a program during an applicable cohort period. As with the 2011 Prior Rule, for D/E rates to be calculated for a program, a minimum of 30 students would need to have completed the program, after applying the exclusions, during the applicable cohort period. If 30 or more students completed the program during the third and fourth award years prior to the award year for which the D/E rates are calculated, then the applicable cohort period would be that ''two-year cohort period.'' ''Two-year cohort period'' is a defined term in proposed § 668.402. If at least 30 students did not complete the program during the two-year cohort period, then the applicable cohort period would be expanded to include the previous two years, the fifth and sixth award years prior to the award year for which the D/E rates are being calculated, and rates would be calculated if 30 or more students completed the program during that ''four-year cohort period'' after applying the exclusions. ''Four-year cohort period'' is a defined term in proposed § 668.402. If, after applying the exclusions, 30 or more students did not complete a program over the two-year cohort period, or the expanded four-year cohort period, then D/E rates would not be calculated for the program. As an example, for the D/E rates calculations for the 2014–2015 award year, the two-year cohort period would be award years 2010–2011 and 2011–2012 and the four-year cohort period would be award years 2008–2009, 2009–2010, 2010–2011, and 2011–2012.

The two- and four-year cohort periods as described would apply to all programs except for medical and dental programs whose students are required to complete an internship or residency after completion of the program. For medical and dental programs, the two-year cohort period would be the sixth and seventh award years prior to the award year for which the D/E rates are calculated. The four-year cohort period would be the sixth, seventh, eighth, and ninth award years prior to the award year for which D/E rates are calculated.

The 2011 Prior Rule applied the same two-year and four-year cohort periods for the debt-to-earnings ratios calculations, but, as discussed, the 2YP and 4YP would be measured in fiscal years rather than award years. Unlike the 2011 Prior Rule, a program would not satisfy the D/E rates measure if rates could not be calculated because there was not a sufficient number of students who completed a program. Rather, the eligibility of the program would not be affected.

Formulas for Calculating the D/E Rates

Each award year, D/E rates would be calculated for each GE program that meets the minimum size of 30 students completing the program for the two-year or four-year cohort period. In calculating the D/E rates, the Secretary would use the same formulas as under the 2011 Prior Rule:

$$\text{discretionary income rate} = \frac{\text{annual loan payment}}{\text{discretionary income}}$$

$$\text{annual earnings rate} = \frac{\text{annual loan payment}}{\text{annual earnings}}$$

Annual Loan Payment

The annual loan payment for each formula would be calculated as follows.

First, the loan debt that each student in the applicable cohort period accumulated for attendance in the GE program would be determined based on information in the Department's NSLDS and information reported by the institution under proposed § 668.411. Under proposed § 668.404(d), loan debt would include all title IV loans (excluding Federal PLUS Loans made to parents of dependent students, Direct PLUS Loans made to parents of dependent students, and Direct Unsubsidized Loans that were converted from TEACH Grants), private education loans as defined in 34 CFR 601.2, and institutional student loans. Unlike the 2011 Prior Rule, under the proposed regulations, loan debt would include Perkins Loans. In comparison to the 2011 Prior Rule, the proposed regulations clarify that institutional loan debt would include any outstanding debt as a result of credit extended to the student by, or on behalf of, the institution (e.g., institutional financing or payment plans) that the student would be obligated to repay after completing the program.

As discussed in more detail under ''§ 668.411 Reporting requirements for GE programs,'' the credential levels under the proposed regulations would differ from the credential levels of the 2011 Prior Rule. The 2011 Prior Rule had one credential level for undergraduate certificates. The proposed regulations would break out undergraduate certificates into three credential levels based upon the length of the program. Further, the proposed regulations would add a graduate credential and clarify that postgraduate certificates would be included in the post-baccalaureate certificate credential level.

All of the loan debt incurred by the student for attendance in any undergraduate GE program at the same institution would be attributed to the highest credentialed undergraduate GE program subsequently completed by the student at the institution. Similarly, all of the loan debt incurred by the student for attendance in any post-baccalaureate or graduate GE program at the institution would be attributed to the highest credentialed graduate degree GE program completed by the student at the institution. As defined in proposed § 668.402, the undergraduate credential levels are less than one year undergraduate certificate or diploma, one year or longer but less than two years undergraduate certificate or diploma, two years or longer undergraduate certificate or diploma, associate degree, and bachelor's degree. The graduate credential levels are post-baccalaureate certificate (including postgraduate certificates), graduate certificate, master's degree, doctoral degree, and first-professional degree.

The 2011 Prior Rule included a similar debt attribution scheme, but would not have differentiated between undergraduate and graduate programs. Debt would simply have been rolled up to the highest credentialed GE program that the student completed at the same institution regardless of whether the highest credentialed program was an undergraduate program or graduate program. As under the 2011 Prior Rule, the Department would have the discretion to include in the loan debt attribution all loan debt incurred by the student for attending GE programs at another institution if the institution and the other institution are under common ownership or control, as determined under 34 CFR 600.31.

Under proposed § 668.404(b)(1)(ii), an adjustment to the amount of each student's loan debt would be made if the student's loan debt exceeds the total amount of the tuition and fees assessed to the student for his or her entire enrollment in the program plus the total amount of the allowances for books, supplies, and equipment included in the student's title IV cost of attendance, pursuant to section 472 of the HEA, 20 U.S.C. 1087ll, or a higher amount if assessed to the student by the institution. The amount used for each student's loan debt in the D/E rates calculations would be the lower of the total amount of the student's loan debt or the total amount of the student's tuition and fees and books, supplies, and equipment. In comparison to the 2011 Prior Rule, the proposed regulations add books, supplies, and equipment to the limitation of loan debt to tuition and fees.

Second, the median loan debt of the students in the applicable cohort period would be determined using the loan debt information previously described.

Third, as under the 2011 Prior Rule, the median loan debt would be amortized over a 10-, 15-, or 20-year repayment period depending on the credential level of the program. A 10-year repayment period would be used for programs that lead to an undergraduate certificate, a post-baccalaureate certificate, an associate degree, or a graduate certificate. Fifteen years would be used for programs that lead to a bachelor's degree or to a master's degree. Twenty years would be used for programs that lead to a doctoral or first-professional degree.

The interest rate used to amortize the median loan debt would be the average annual interest rate on Federal Direct Unsubsidized Loans during the six years prior to the end of the applicable cohort period. These six years would include the applicable cohort period. For undergraduate programs, the interest rate on Federal Direct Unsubsidized Undergraduate Loans would be applied. For graduate programs, the interest rate on Federal Direct Unsubsidized Graduate Loans would be applied. The interest rate that would be used under the proposed regulations differs from the 2011 Prior Rule. Under the 2011 Prior Rule, median loan debt would be amortized using the then-current interest rate on Federal Direct Unsubsidized Loans, regardless of the credential level of the program.

Discretionary Income

For the denominator of the discretionary income rate, discretionary income would be calculated by subtracting 150 percent of the Poverty Guideline for a single person residing in the continental United States as published by HHS from the higher of the mean or median annual earnings. The proposed regulations and the 2011 Prior Rule use the same calculation for discretionary income.

Annual Earnings

Under proposed § 668.404(c), as under the 2011 Prior Rule, the Department would obtain from SSA or another Federal agency the most currently available mean and median

annual earnings for students who completed the program during the applicable cohort period. As an example, the D/E rates calculations for the 2014–2015 award year would be based on the loan debt of students completing a program in the 2010–2011 and 2011–2012 award years, if the applicable cohort period for that program was the two-year cohort period, and the earnings of those former students for the 2014 calendar year. Annual earnings include earnings reported by employers to SSA and earnings reported to SSA by self-employed individuals. The higher of the mean or median annual earnings would be used as the denominator of the annual earnings rate.

Transition Period

Under proposed § 668.404(g), for a failing or zone program, in the first four years that the regulations are in effect, for example, award years 2014–2015, 2015–2016, 2016–2017, and 2017–2018, the Department would calculate transitional D/E rates using the median loan debt of students who completed the program during the most recently completed award year instead of the median loan debt of students who completed during the applicable cohort period. The earnings component of the calculations would still use the most currently available earnings of the students who completed the program during the applicable cohort period. For example, for the 2014–2015 award year, the denominator of both standard D/E rates calculations would use the higher of the mean or median calendar year 2014 earnings of students who completed a program during the 2010–2011 and 2011–2012 award years (the two-year cohort period) if 30 or more students completed the program during the two-year cohort period. The standard D/E rates would use as the numerator an annual loan payment calculated based on the debt of those same former students. However, the transitional D/E rates would use the same earnings information as the standard D/E rates, but the annual loan payment amount would be calculated based on the debt of students who completed the program during the 2014–2015 award year. The lower of the standard D/E rates or transitional D/E rates would be used to assess the program. Although the 2011 Prior Rule did not include a transition period, it would have capped the number of ineligible programs in the first year that programs could become ineligible, and, additionally, in the first three years that the 2011 Prior Rule would be effective, would have allowed for an alternate earnings appeal based on BLS earnings data.

Reasons: The methodology that would be used to calculate the D/E rates under the proposed regulations is substantially similar to that of the 2011 Prior Rule. We discuss our reasoning regarding these proposals, particularly any differences from the 2011 Prior Rule, by subject area.

Minimum Number of Students Completing the GE Program

As under the 2011 Prior Rule, the proposed regulations would establish a minimum threshold number of students who completed a program, or ''n-size,'' for D/E rates to be calculated for that program. Both the 2011 Prior Rule and the proposed regulations require a minimum n-size of 30 students completing the program. However, some GE programs are relatively small in terms of the number of students enrolled and, perhaps more critically, in the number of students who complete the program. In many cases, these may be the very programs whose performance should be measured, as low completion rates may be an indication of poor quality. As a result, we considered, and presented during the negotiations, a lower n-size of 10.

We estimate that in 2010, there were roughly 50,000 total GE programs in existence and about 4 million students receiving title IV, HEA program funds enrolled in those programs. At an n-size of 30, we estimate, based on our analysis of the 2012 GE informational rates, that approximately 5,539 of those programs would have received D/E rates. Those programs cover just above 60 percent of the total enrollment of students who received title IV, HEA program funds in GE programs in 2010. At an n-size of 10, approximately 11,050 GE programs would have received D/E rates, representing about 75 percent of the total enrollment of students who received title IV, HEA program funds in GE programs.

The non-Federal negotiators raised several issues with the proposal to use a lower n-size of 10. First, some of the negotiators questioned whether the D/E rates calculations using an n-size of 10 would be statistically valid. See ''§ 668.403 Gainful employment framework'' for a discussion of the Department's tolerance analysis of the D/E rates and thresholds. Further, they were concerned that reducing the minimum n-size to 10 could make it too easy to identify particular individuals, putting student privacy at risk. These negotiators noted that other entities, which they did not identify, requiring these types of calculations use a minimum n-size of 30 to address these two concerns.

Other non-Federal negotiators supported the Department's proposal to reduce the minimum n-size from 30 to 10 students completing the program. They argued that the lower number would allow the Department to calculate D/E rates for more GE programs, which would decrease the risk that GE programs that serve students poorly are not held accountable. They argued that some GE programs have very low numbers of students who complete the program, not because these programs enroll small numbers of students, but because they do not provide adequate support or are of low quality, and, as a result, relatively few students who enroll actually complete the program. They argued that these poorly performing programs may never be held accountable under the D/E rates measure because they would not have a sufficient number of students who completed the program for the D/E rates to be calculated. These negotiators further argued that other proposed changes from the 2011 Prior Rule, such as only including students receiving title IV, HEA program funds and disaggregating the undergraduate certificate credential into three categories, as discussed in ''§ 668.411 Reporting requirements for GE programs,'' would make it less likely that many programs would have 30 students who completed the program during the cohort period. For these reasons, these negotiators believed that the Secretary should calculate D/E rates for any GE program where at least 10 students completed the program during the applicable cohort period.

We acknowledge the limitations of using 30 students. However, to be consistent with our regulations governing cohort default rate at the institutional level, § 668.216, and the proposed pCDR, § 668.516, we propose to retain the minimum n-size of 30 students who complete the program as we did in the 2011 Prior Rule. However, we invite comment on whether the minimum n-size should be set at 10. We encourage commenters to submit relevant data and analysis to support their views.

Amortization

As under the 2011 Prior Rule, the proposed regulations would use three different amortization periods, based on the credential level of the program, for determining a program's annual loan payment amount. At the negotiations, the Department presented an amortization schedule that would apply

a single 10-year amortization period, regardless of credential level. However, in the proposed regulations, we have retained the 10-, 15-, and 20-year schedule. This schedule would mirror the loan repayment options available under the HEA, which are available to borrowers based on the amount of their loan debt, and account for the fact that borrowers who were enrolled in higher-credentialed programs (e.g., bachelor's and graduate degree programs) are likely to have more loan debt than borrowers who enrolled in lower-credentialed programs and, as a result, are more likely to be in a repayment plan that would allow for a longer repayment period.

Our data show that a substantial majority of borrowers entering repayment in 2012, regardless of credential level, are in the standard repayment option of 10 years. Graduate students are in this plan at a lower rate, 63 percent, than students who attended two-year and four-year institutions, who are in 10-year repayment at rates between 80 and 90 percent.

We analyzed data on the repayment behavior of borrowers across all sectors who entered repayment earlier, between 1980 and 2011. Adjusting for inflation, in 2011 dollars, average loan sizes have increased only moderately over the past 15 years. From 1999, when the majority of borrowers repaid their loans within 10 years, to 2009, average loan size has increased by about 6 percent (in 2011 dollars).

We further analyzed the repayment patterns of the subset of borrowers within this group who entered repayment between 1993 and 2002. Overall, about 54 percent of these borrowers had repaid their loans in full within 10 years upon entering repayment, about 65 percent had repaid their loans within 12 years, about 74 percent within 15 years, and, for the 1993 cohort, 83 percent within 20 years.[58]

Within this same 1993–2002 subset, repayment periods differed somewhat among credential levels. The percentage of graduate students who repaid their loans within 10 years lagged slightly behind the rate among undergraduates at two-year and four-year institutions. Within 10 years of entering repayment, about 58 percent of undergraduates at two-year institutions, 54 percent of undergraduates at four-year institutions, and 47 percent of graduate students had fully repaid their loans. Within 15 years of entering repayment, about 74 percent of undergraduates at two-year institutions, 76 percent of undergraduates at four-year institutions, and 72 percent of graduate students had fully repaid their loans.

For more recent cohorts, repayment behavior may depart from historical trends. For example, of borrowers who entered repayment in 2002, 55 percent of undergraduates at two-year institutions, 44 percent of undergraduates at four-year institutions, and 31 percent of graduate students had repaid their loans within 10 years.[59]

Although some negotiators supported the continuation of the amortization schedule from the 2011 Prior Rule, others were concerned that the 15- and 20-year time periods are too long, would allow for excessive tuition charges, and are not likely to reflect the actual time to repayment for most borrowers. We invite comments on the proposed amortization provision as well as on a 10-year amortization period for all credential levels and a 20-year amortization period for all credential levels. We encourage commenters to submit relevant data and analysis to support their views.

Loan Debt

As under the 2011 Prior Rule, in calculating a student's loan debt, the Department would include title IV, HEA program loans and private education loans that the student borrowed for enrollment in the GE program. The amount of a student's loan debt would also include any outstanding debt as a result of credit extended to the student by, or on behalf of, the institution (e.g., institutional financing or payment plans) that the student is obligated to repay after completing the program. Including both private loans and institutional loans in addition to Federal loan debt would provide the most complete picture of the indebtedness a student has incurred to enroll in a GE program.

In comparison to the 2011 Prior Rule, the proposed regulations would add Perkins Loans to the title IV, HEA program loans that would be considered as a part of a student's loan debt. We have done this because some GE programs accept Perkins Loans in addition to FFEL and Direct Loans.

Calculation of D/E Rates

There are a number of differences in the D/E rates calculation procedures between the 2011 Prior Rule and the proposed regulations:

- Measuring the D/E rates on an award year basis, rather than on a fiscal year basis.
- Using an average interest rate over the approximate period of attendance instead of the current interest rate to calculate the annual loan payment.
- Including books, equipment, and supplies as part of the charges, in addition to tuition and fees, in determining the amount of a student's loan debt that will be considered in calculating the annual loan payment for a program.
- Separating undergraduate and graduate programs in attributing loan debt to the highest credentialed program completed at an institution.
- Excluding from a program's D/E rates calculations students who subsequently completed a higher credentialed GE program.

The reasons for these changes are discussed in turn below. Further, although the D/E rates calculation under the proposed regulations, as under the 2011 Prior Rule, would apply the higher of the mean or median annual earnings, we invite comment on whether the calculation should use only the mean annual earnings or only the median annual earnings instead.

Award Year

We propose to use award year rather than fiscal year for the purpose of calculating a GE program's D/E rates in order to better align the calculations with institutional reporting and recordkeeping, which are by award year. Using an award year for calculation of the D/E rates would help to simplify the reporting process under the proposed regulations for institutions. It is important to note that award years, like fiscal years, span 12 months.

Interest Rate

We propose using the average interest rate over a six-year period going back from the end of the applicable cohort period to address two issues. First, as opposed to using the current interest rate, as was provided in the 2011 Prior Rule, using the average of the interest rates in effect during the six years prior to the end of the applicable cohort period better aligns the D/E rates calculations with the actual interest rate on the loans taken out by individual students who completed the program during the cohort period. As demonstrated by the following table, regardless of credential level, over 90 percent of title IV loans entering

[58] In comparison, the average percentage of borrowers who repaid their loans within 20 years for the cohort of borrowers that entered repayment between 1988 and 1993 was 81 percent.

[59] Department of Education analysis of NSLDS data.

repayment in 2012 were originated within the six years prior to 2012.

DISTRIBUTION BY LOAN ORIGINATION YEAR FOR TITLE IV LOANS (NON-CONSOLIDATED) ENTERING REPAYMENT IN 2012

IHE type & sector	Number of years prior to year loan entered repayment (2012)						
	0	1	2	3	4	5	6 or more
2yr or less public	11.67%	38.64	23.3	11.27	6.49	3.97	4.66
2yr or less private	7.8	47.57	27.57	9.04	3.5	2.15	2.37
2yr or less for-profit	7.74	57.67	27.64	4.89	1.17	0.41	0.5
4yr public	5.41	21.81	21.25	15.6	17.01	9.92	9
4yr private	4.86	19.9	21.36	16.96	19.25	9.34	8.33
4yr for-profit	8.03	36.07	27.37	15.12	7.41	3.54	2.46

Source: *NSLDS.*

Second, the use of an average rate helps minimize year-to-year fluctuations in the interest rate that would be applied to the D/E rates calculations and therefore would lead to more predictability for institutions. An analysis of the data provided to the negotiating committee shows that the number of programs that have D/E rates that are passing, in the zone, or failing changes materially as the interest rate changes:

INTEREST RATE VARIATIONS FOR DEBT TO EARNINGS ON 2012 GE INFORMATIONAL SAMPLE [60]

	3%	4%	5%	6%	7%	8%	9%
Passing Programs	4,555	4,441	4,304	4,185	4,033	3,919	3,795
Zone Programs	670	728	807	855	948	986	1,033
Failing Programs	314	370	428	499	558	634	711

For example, roughly twice as many programs in the informational sample would fail the D/E rates measure at an 8 percent interest rate in comparison to a 3 percent interest rate.

We seek comment on the proposed method for determining the interest rate for the D/E rates calculations, and further invite proposals on other methods to set the interest rate. Specifically, we invite comment on whether rates should be averaged over a time period other than six years, varying based on the length of the program, or whether a weighted average of the actual interest rates associated with the loans included in the median loan debt calculation should be used. We encourage commenters to submit relevant data and analysis to support their views.

Books, Equipment, and Supplies

As under the 2011 Prior Rule, we propose to cap loan debt for the D/E rates calculations at the total costs assessed to each student for enrollment in a GE program because institutions can exercise control over this portion of the amount that a student may borrow. Students may borrow up to the lower of the cost of attendance or annual and aggregate loan limits imposed under parts B and D of the HEA. Cost of attendance is comprised of costs assessed by institutions for the program, tuition, fees, books, supplies, and equipment and, additionally, costs that students incur that are not related to the program, such as living expenses and other indirect costs.

Initially, the Department did not propose a cap. Many of the institutional negotiators, however, argued in favor of this cap because, under the HEA, institutions may not generally limit the amount an otherwise eligible student may borrow up to the cost of attendance or annual and aggregate loan limits under the HEA. These negotiators noted that students often borrow to cover costs other than those directly related to the program, such as for living expenses, over which institutions have little, if any, control. They argued that institutions have no ability to prevent a student from borrowing the maximum amount permissible, even if the cost of the program is much lower. These negotiators suggested that institutions should not be held accountable for those portions of student debt that are unrelated to the cost of the program.

Some of the committee members suggested including in the loan cap calculation not only the amount of tuition and fees assessed the student, but also the total cost of books, supplies, and equipment that a student would incur in completing the program. The negotiators reasoned that, like tuition and fees, an institution controlled these costs, either directly by providing the books, supplies, and equipment to a student or indirectly by requiring the student to purchase the materials. We agree and propose that, in the determination of a borrower's loan debt, we would use the lower of:

- The amount of the student's loan debt attributed to enrollment in the program; and
- The total of the student's assessed tuition and fees, and the student's allowance for books, supplies, and equipment included in the cost of attendance disclosed under proposed § 668.412, or the actual amount charged each student in any sale of books, supplies, and equipment, if higher.

We invite comment on the inclusion of books, supplies, and equipment in the tuition and fees cap.

Attributing Loan Debt

Under the 2011 Prior Rule, all loan debt incurred by a student for enrollment in GE programs at an institution would be attributed to the highest credentialed GE program completed by the student, based on the

[60] • Sample includes only two-year cohort period programs (programs eligible for D/E rates only under the four-year cohort period are not included).
• Interest rates are the same for graduate and undergraduate programs.
• Program n-size of 30.
• Calculations are based on annual loan payments under the amortization scheme with a 10-year period for undergraduate certificate, associate's degree, and post-baccalaureate certificate programs, a 15-year period for bachelor's and master's degree programs, and a 20-year period for doctoral and first professional degree programs.

presumption that a student's earnings stem from the highest credentialed program completed. Although we maintain the same presumption in the proposed regulations, we propose to modify the attribution rule by differentiating between undergraduate and graduate programs to account for a lack of equity that the 2011 Prior Rule would create between an institution that offers only graduate programs and one that offers lower credentialed programs in addition to graduate programs. To illustrate, we offer the following example under the 2011 Prior Rule: A student completed a bachelor's degree GE program at Institution A and subsequently enrolled in and completed a graduate GE program at the same institution. In this scenario, if the student completed the graduate program, all of the student's loan debt, both the amount incurred for the lower credentialed program and for the graduate degree program, would be attributed to the graduate degree program and no debt would be attributed to the lower credentialed program.

However, for a similarly situated student who completed the same bachelor's degree GE program at Institution A, but then enrolled in and completed a graduate GE program at another institution that offers only graduate programs, Institution B, the results would be different. For Institution B, only the loan debt incurred by the student for enrolling in the graduate GE program at Institution B would be attributed to that graduate degree program. Institution B would not be held accountable for the debt incurred by the student at Institution A. Unlike at Institution B, Institution A could have students who stay at the institution after completing their undergraduate program to pursue graduate study. The D/E rates calculations for graduate programs at Institution A could include more debt, possibly far more debt, than would the rates for the same program offered by Institution B. The graduate GE programs at Institution A are at a disadvantage simply because the institution offers both undergraduate and graduate programs. This scenario could deter institutions that offer both undergraduate and graduate programs from encouraging their undergraduate students to pursue further study out of concern that they will enroll in graduate programs at that same institution and cause those programs to have worse outcomes under the D/E rates measure than if the institution only enrolled students who completed their undergraduate degrees at other institutions.

To address this issue, we propose that (1) any loan debt incurred by a student at an institution for enrollment in undergraduate GE programs be attributed to the highest credentialed undergraduate program completed by the student, and (2) any loan debt incurred for enrollment in graduate GE programs at an institution be attributed to the highest credentialed graduate GE program completed by the student.

We do not believe that the same distinction should apply with respect to lower credentialed undergraduate programs and higher credentialed undergraduate programs. The academic credits earned in an associate degree program, for example, are necessary for and would be applied toward the credits required to complete a bachelor's degree program. It is reasonable then to attribute the debt associated with all of the undergraduate academic credit earned by the student to the highest undergraduate credential subsequently completed by the student. This reasoning does not apply to the relationship between undergraduate and graduate programs. Although a bachelor's degree might be a prerequisite to pursue graduate study, the undergraduate academic credits would not be applied toward the academic requirements of the graduate program. We invite comment on this change from the 2011 Prior Rule.

In attributing loan debt, we propose to exclude any loan debt incurred by the student for enrollment in programs at another institution. However, the Secretary may include loan debt incurred by the student for enrollment in GE programs at other institutions if the institution and the other institutions are under common ownership or control. The 2011 Prior Rule included the same provision. As we noted at that time, although we generally would not include loan debt from other institutions students previously attended, entities with ownership or control of more than one institution offering similar programs might have an incentive to shift students between those institutions to shield some portion of the loan debt from the D/E rates calculations. 76 FR 34417. Including the provision that the Secretary may choose to include that loan debt should serve to discourage institutions from making these kinds of changes.

Several of the negotiators expressed concerns with this proposal and, in particular, the provision that provides the Secretary with discretion to include the loan debt incurred at an institution under common ownership or control. These negotiators indicated that the Secretary should always include this loan debt. The Department could not implement such a provision, however, because we do not categorize institutions by ownership or control. Further, because this provision is included to ensure that institutions do not manipulate their D/E rates, it should only be applied in cases where there is evidence of such behavior. In those cases, the Secretary would have the discretion to make adjustments. A negotiator also suggested that the proposed regulations outline the criteria the Secretary would use when determining whether to include the loan debt incurred at an institution under common ownership or control. We invite comment on whether such criteria should be included in the proposed regulations, what those criteria should be, and how to implement those criteria.

Exclusions

Under the proposed regulations, we would exclude from the D/E rates calculations the same categories of students that we would exclude under the 2011 Prior Rule. Although the text of the 2011 Prior Rule did not specifically state the exclusion for students who completed a higher credentialed GE program at the same institution at which they previously completed a lower credentialed GE program, the exclusion is reflected in our discussion of attributions and exclusions in the 2011 Prior Rule. See 76 FR 34417.

We believe the approach we adopted in the 2011 Prior Rule continues to be sound policy. With respect to students whose loans are in deferment or have been discharged, the reasons for which these students' loans are in deferment or have been discharged (i.e., military service, total and permanent disability, death) are not related to whether a program prepares students for gainful employment. However, we invite comment on, for the exclusion based on military-related loan deferment, whether the proposed regulations should require that the loans are in deferment for a minimum number of days out of the year for the exclusion to apply.

We also continue to believe that we should not include the earnings or loan debt of students who were enrolled in another eligible program at the institution or at another institution during the year for which the Secretary obtains earnings information. These students are unlikely to be working full-time while in school and consequently their earnings would not be reflective of

the program being assessed under the D/E rates. It would therefore be unfair to include these students in the D/E rates calculation.

To clarify our policy from the 2011 Prior Rule, we are including in the proposed regulations an exclusion from the D/E rates calculations for students who have completed a higher credentialed GE program after completing a lower credentialed GE program. We would do this to avoid a student being counted twice since, under the attribution rules, the debt incurred in the lower credentialed program would be attributed to the debt incurred in the higher credentialed program pursuant to proposed § 668.404(d)(2).

Transition Period

Section 668.7(k) of the 2011 Prior Rule provides for, in the first year in which programs could become ineligible, for each institutional category (public, private non-profit, proprietary), a cap on the number of programs that would lose eligibility. Within each category, programs with failing debt measures would be ranked by repayment rate and would lose eligibility based on their ranking until the number of programs made ineligible accounted for 5 percent of the total number of students who completed programs in that institutional category. The cap was set for each institutional category so that no one sector would bear more than 5 percent of the initial impact of the regulations and to lessen the impact on small entities. Specifically, in connection with the 2011 Prior Rule, we said, ''the delayed effective date and initial cap on the regulations' effect will provide time for small entities to adapt to the regulations.'' 76 FR 34386, 34509 (June 13, 2011).

The proposed regulations do not include a similar cap on the number of GE programs that could lose title IV, HEA program eligibility. As discussed in ''§ 668.403 Gainful employment framework,'' we believe that programs that do not pass the D/E rates measure but are not among the worst performers should be given time, opportunity, and incentive to improve. But, if these programs do not improve—if their performance remains below the proposed D/E rates thresholds—they should become ineligible for participation in the title IV, HEA loan programs.

The proposed regulations also do not include the availability of an alternate earnings appeal in the first three years using BLS data as the 2011 Prior Rule did. For our reasoning, see ''§ 668.406 *D/E rates alternate earnings appeals and showings of mitigating circumstances.*''

Some negotiators representing institutions expressed concern that immediate efforts by institutions to improve programs and reduce debt at the time the proposed regulations go into effect would not be reflected in the first few years of D/E rates calculations as the calculation takes into account the outcomes of students who completed the program several years in the past. To allow for that improvement, the proposed regulations provide for an alternative calculation of a GE program's D/E rates during a four-year transition period. In summary, during the transition period, if a GE program's draft D/E rates are failing or in the zone, the Secretary would calculate transitional draft D/E rates using the median loan debt of the students who completed the program during the most recently completed award year, rather than the median loan debt of the students who completed the program during the applicable cohort period. Because the transitional calculation would apply the loan debt of students completing a program after the proposed regulations go into effect, immediate reductions in tuition and fees and other adjustments by an institution in order to decrease debt of current students would be reflected in the results of a program's transitional D/E rates. Whereas the cap under the 2011 Prior Rule afforded institutions an opportunity to avoid a loss of eligibility without doing anything to improve their programs, the transition period in the proposed regulations provides institutions an opportunity to avoid ineligibility and, at the same time, improve student outcomes.

We invite comment on the proposed transition period, including whether the transition calculation should apply to all programs or, as in the proposed regulations, only to programs whose draft D/E rates are in the zone or are failing. Additionally, we invite comments on whether to include in the final regulations a cap on program ineligibility in the first year programs could become ineligible as was included in the 2011 Prior Rule.

Section 668.405 Issuing and Challenging D/E Rates

Current Regulations: Section 668.7(e) of the 2011 Prior Rule establishes the process by which the Secretary would provide an institution notice of the GE program's students whose debts and earnings would be considered to determine the program's debt-to-earnings ratios. Under this process, the Secretary would provide the institution with a list of those students, and the institution would have an opportunity to correct that list during a 30-day correction period. Under the 2011 Prior Rule, if the Secretary accepted as accurate the information provided by the institution to support a correction, the updated information would be used to create a final list of students that the Secretary submits to SSA in order to obtain the earnings information needed to calculate the debt-to-earnings ratios.

The 2011 Prior Rule provided that the Department would provide the final list of students to SSA, which, pursuant to a data-sharing arrangement with the Department, would obtain the individual earnings data for all of the students on the list, and then calculate and provide to the Department the mean and median earnings data for the students on the list. To preserve the privacy of students' individual earnings information, SSA would only provide the Department with the aggregate earnings information for a list of students if SSA is able to ''match'' at least 10 students on the list with its own earnings data.

Because SSA does not disclose any individual earnings data that would enable the Secretary to assess a challenge to an individual student's reported earnings, the Secretary would not consider, under § 668.7(e) of the 2011 Prior Rule, any challenge to the accuracy of the mean or median annual earnings data that the Secretary obtains from SSA to calculate the GE program's debt-to-earnings ratios. Thus, under the 2011 Prior Rule, an institution's opportunity to challenge the information needed to determine the aggregate earnings information used in calculating the draft debt-to-earnings ratios is limited to a review of the list that would be sent to SSA. The institution would only be permitted to review and propose corrections to the list of students prior to the Department providing the final list to SSA.

Under the 2011 Prior Rule, the Department would:

- Based on the information submitted by institutions under § 668.6 of the 2011 Prior Rule, create a list of the students who completed the program during the applicable 2YP or 4YP (§ 668.7(e)(1));
- Provide the list of students to the institution and consider any changes to the list that the institution proposed within 30 days of being provided the list (§ 668.7(e)(1));
- Obtain from SSA or another Federal agency the mean and median annual earnings of the students on the list (§ 668.7(e)(1)(iii));

• If SSA is unable to match certain students on the list, exclude from the calculation of the median loan debt for failing programs the same number of students with the highest loan debts as the number of students whose earnings SSA did not match (§ 668.7(e)(3)(ii));

• Calculate draft debt-to-earnings ratios for the program using the higher of the mean and median earnings provided by SSA (§ 668.7(e)(1)(iii));

• Provide the draft debt-to-earnings ratios to the institution along with the individual student loan data on which the ratios were based, and consider any challenges to the individual student loan data used to calculate the ratios submitted by the institution within 45 days after the Secretary notifies the institution of the draft debt-to-earnings ratios (§ 668.7(e)(2)); and

• Issue final debt-to-earnings ratios (§ 668.7(f)).

Under the 2011 Prior Rule, an institution would have the opportunity to appeal the determination of a program's final debt-to-earnings ratios in certain circumstances. The appeals process under the 2011 Prior Rule and the Department's related proposed regulations are discussed under ''§ 668.406 *D/E rates alternate earnings appeals and showings of mitigating circumstances*.''

Proposed Regulations: Proposed § 668.405 would adopt the procedures for issuing and challenging debt-to-earnings ratios included in the 2011 Prior Rule, but provide additional detail with respect to the procedures involved.

As in the 2011 Prior Rule, under proposed § 668.405, the Secretary would provide an institution the data on which the D/E rates for a GE program would be based and an opportunity to correct the data before the Secretary would issue draft D/E rates for the program. Specifically, under the proposed process, the Secretary would:

• Based on the information submitted by institutions under proposed § 668.411, create a list of the students who completed the program during the applicable cohort period, and indicate which students would be removed from the list under § 668.404(e) and the specific reason for the exclusion (§ 668.405(b)(1));

• Provide the list of students to the institution and consider any changes to the list that the institution proposes within 45 days of receiving the list (§§ 668.405(b)(2); 668.405(c));

• Obtain from SSA or another Federal agency the mean and median annual earnings of the students on the final list (§ 668.405(d));

• If SSA is unable to match certain students on the list, exclude from the calculation of the median loan debt the same number of students with the highest loan debts as the number of students whose earnings SSA did not match (§ 668.405(e)(2));

• Calculate draft D/E rates for the program using the higher of the mean or median annual earnings provided by SSA (§ 668.405(e)(1));

• Provide the draft D/E rates to the institution along with the individual student loan data on which the rates were based, and consider any challenges to the individual student loan data used to calculate the rates submitted by the institution within 45 days after the Secretary notifies the institution of the draft D/E rates (§ 668.405(f)); and

• Issue final D/E rates (§ 668.405(g)).

Each of these steps was included in § 668.7(e) and (f) of the 2011 Prior Rule with several changes as noted in the following discussion.

In calculating the draft D/E rates under proposed § 668.405, the Secretary would first create the list of students who completed a GE program during the applicable cohort period from data previously reported by the institution. Although not specifically included in the 2011 Prior Rule, we have provided in the proposed regulations that the Secretary would indicate on the list the students the Secretary would exclude from the list (and the reason for the exclusion) under proposed § 668.404(e). Although this departs from the regulatory language in the 2011 Prior Rule, it is consistent with the operating procedure the Department used to implement the regulations. We believe it would be helpful to provide this clarity in the proposed regulations.

Students who may be excluded under proposed § 668.404(e) are those students whose status during the award year is such that including their earnings would tend to distort the assessment of the program's D/E rates (e.g., students in military deferment status or students who are enrolled in another eligible educational program at any time during the calendar year for which earnings are obtained). The Secretary would also notify the institution of the applicable cohort period that the Department would use to compile the final list.

Similar to the 2011 Prior Rule, the institution would have the opportunity to propose corrections to the list. However, instead of the 30-day period provided under the 2011 Prior Rule, the institution would have 45 days from receiving the student list from the Secretary to submit its corrections. The institution may seek to correct any data included on the list regarding an individual student. An institution might inform the Department that, although it previously reported that a student completed a GE program, its report was incorrect and the student did not in fact complete the program. The institution may also request correction of other details regarding the listed students, such as whether a student had in fact enrolled in the program, whether a student completed the program during the applicable cohort period, whether a student should be excluded on the basis indicated on the list, and the credential level offered by the program that the student completed. The proposed regulations, in § 668.405(c)(3), like the 2011 Prior Rule, require the institution to identify at this point in the process any corrections it wishes to make to the student-specific data on the list. This precludes an institution from renewing later in the process an unsuccessful challenge to student-specific data with respect to a student included on the final list on which the draft D/E rates are based. An institution also would not be permitted to assert in response to the draft D/E rates final list a challenge to the student-specific data of an individual on that final list. If an institution contends that an individual student should be removed from the list because the student did not complete the program, did not complete the program during the applicable cohort period, or was not enrolled in the program, and the Secretary accepts the proposed correction and removes the student from the list, the institution retains the right to challenge other student-specific data regarding that student if the student is later included in a proposed list for a different award year. If the institution contends only that the student should be removed from the list and raises no other correction, and the Secretary rejects the proposed correction, the institution may not later seek to correct other elements of student-specific data for that student.

If the institution proposes a correction to the list, the Secretary would notify the institution whether a proposed correction is accepted. The Secretary would use any accepted correction to create the final list of students. We believe that requiring any corrections to student-specific data to be raised at this point, in response to the proposed list of students, rather than again in response to the draft D/E rates, produces a more efficient process. To facilitate this process, the proposed regulations expand the period for asserting such corrections from 30 days to 45 days.

As under the 2011 Prior Rule, after finalizing the list of students, the Secretary would submit the list to SSA or another Federal agency. The Secretary would obtain from SSA the

mean and median earnings, in aggregate form, of those students on the list whom SSA has matched to its earnings data. The Secretary would calculate draft D/E rates using the higher of the mean or median earnings reported by SSA.

Consistent with the 2011 Prior Rule, the list provided by the Department to SSA would include the student's full name, date of birth, and Social Security Number. SSA only provides earnings data if at least 10 of the students on the Department's list for the GE program can be matched with its own earnings data. If SSA identifies a minimum of 10 matches, SSA would then identify the annual earnings for the students whose data it matched, using SSA's procedures for identifying an individual, and would provide to the Secretary for that group only the aggregate data for the students on the list. SSA would also advise the Secretary of the number, but not the identity, of students whom it could not match successfully against its records of earnings.

In turn, the Secretary would use the number of SSA non-matches to exclude from the calculation of the median loan debt (and therefore annual loan payment) the same number of students as the SSA non-matches, starting with the student with the largest loan debt on the list. This process, the same as that used in the 2011 Prior Rule, would treat the non-matches as originating from the students with the highest loan debt and eliminate those loan amounts from the calculation. The debts of the remaining students would then be used to calculate the annual loan payment used in the numerator for the D/E rates. We note, however, that under the 2011 Prior Rule, this process was only applied to programs that failed the debt-to-earnings ratios.

Upon calculation of the draft D/E rates, the Secretary would notify the institution of the GE program's draft D/E rates and provide the student loan information on each individual student loan on which the rates were based. The Secretary would also indicate the number of loans that were removed based upon the number of students in the program whose earnings could not be obtained from SSA.

Under proposed § 668.405(f), the institution would then have the opportunity, within 45 days of notice of the draft D/E rates, to challenge the accuracy of the rates. Specifically, as under the 2011 Prior Rule, the institution at this point would be permitted to challenge only the loan data used to calculate the debt component of the draft D/E rates and the accuracy of the actual calculation of the rates from that data and the reported aggregate earnings. The Secretary would notify the institution whether a proposed challenge is accepted and, if so, would use any corrected loan data to recalculate the GE program's draft D/E rates. For an award year's D/E rates calculation, an institution would be permitted one challenge to the accuracy of the loan debt information that the Secretary used to calculate that award year's median loan debt for the program; we note that no such limitation was included in the 2011 Prior Rule. This would not preclude an institution from challenging the inclusion of a student who appears on a different list for a different cohort or for a different program.

Although the 2011 Prior Rule did not specify a timeframe by which the Secretary would issue a final determination, under proposed § 668.405(g), the rates would become final 45 days after the date the draft D/E rates are provided to the institution or after resolution of a timely challenge to the draft D/E rates. The Secretary would notify the institution of the final rates by issuing the notice of determination described in proposed § 668.409. That notice would also explain the specific consequences triggered by those rates, if any, for the GE program. D/E rates, once final, would become public information.

There are three additional details about the proposed corrections and challenge processes worth noting. Although not specified in the 2011 Prior Rule, the proposed regulations clarify that the institution would bear the burden of proof to show that the list of students, or that the loan debt information used to calculate the median loan debt for the program, is incorrect. The institution would be required to ensure that any material it submits to make a correction or challenge is complete, timely, accurate, and in a format acceptable to the Secretary and consistent with any instructions that the Secretary provides to the institution with the notice of draft D/E rates. In addition, the proposed regulations would provide that an institution that does not timely challenge the draft D/E rates during the 45-day period waives any objection to those rates.

As under the 2011 Prior Rule, an institution's opportunity to challenge the GE program earnings information obtained from SSA would be limited to offering corrections to the list of students to be provided to SSA. The Secretary would not consider, under the proposed regulations, any challenge to the aggregate earnings information used to calculate the draft D/E rates for the GE program. Although challenges to the SSA earnings data would not be permitted as part of the D/E rates calculation process, institutions would have the opportunity to appeal the determination of a program's final D/E rates using earnings data from other sources. That appeals process is discussed under ''§ 668.406 *D/E rates alternate earnings appeals and showings of mitigating circumstances.*''

The proposed regulations, like the 2011 Prior Rule, provide that a program's D/E rates would be based on the debt and earnings of those students who completed the program in the two-year cohort period, so long as that number is equal to or greater than 30. However, if there are fewer than 30 students who completed the program in the two-year cohort period, the Secretary would calculate the program's D/E rates using the debt and earnings of the students who completed the program in the four-year cohort period.

Specifically, consistent with our treatment of programs with small numbers in § 668.7(d)(2)(i)(A) of the 2011 Prior Rule, we note that, for some GE programs that initially have 30 or more students who completed the program on the list of students for the two-year cohort period being evaluated, the number could fall to fewer than 30 upon correction by the institution before the list is finalized for submission to SSA. In those situations, the group of students on which the D/E rates calculations are based would be expanded from those included in the two-year cohort period to those included in the four-year cohort period. Again, if the total number of students in the applicable cohort period is fewer than 30, the Department would not calculate D/E rates.

To make the corrections process more efficient when there is a possibility that a four-year cohort period may be needed to calculate D/E rates, we would provide both a two-year cohort period list and a separate list—one that would name those additional students who completed the program during the two years prior to that—to the institution and explain that both lists would be used to determine a program's D/E rates if the two-year cohort period list did not, after correction by the school, identify at least 30 students who completed the program.

Reasons: In the interest of fairness and due process, the proposed regulations are intended to provide institutions with an adequate opportunity to correct the list that would be submitted to SSA and to challenge the loan data on which the draft D/E rates are calculated. In that regard, the proposed regulations retain

much of the content of the 2011 Prior Rule, but provide more detail to give institutions greater clarity as to the process for issuing draft D/E rates and the corrections and challenges permitted in connection with that process.

The proposed regulations continue to base the draft D/E rates on the aggregate SSA earnings information for students who completed the program in the applicable cohort period. We believe that SSA earnings information is reliable. The information is reported by individuals and entities, and maintained, monitored, and preserved by SSA, within a strict, legal framework. The individual earnings data are required by Federal law to be reported to SSA, the data are maintained by SSA in compliance with congressionally mandated security and privacy restrictions, and the data are released to the Department only in conformance with congressionally mandated information quality requirements. 76 FR 34423.

Specifically, employers are required by section 3102 of the Internal Revenue Code to withhold from earnings and to remit to the Internal Revenue Service (IRS) employment taxes, and to report through Form W–2 the earnings on which the withholdings were based. 20 CFR 404.114. SSA maintains earnings information in its Master Earnings File (MEF). A detailed description of the process SSA uses to obtain data from employers and maintain that data in the MEF can be found at *www.ssa.gov/policy/docs/ssb/v69n3/v69n3p29.html*. Furthermore, SSA's data are subject to verification, correction, and adjustment. SSA compares the earnings information it receives from employers through Forms W–2 against earnings reports sent by the employer to the IRS through Forms 941, 943, or 944 or Schedule H (Form 1040). SSA routinely performs a reconciliation of the data it receives with the data received by the IRS. See 20 CFR 404.114(d); see *www.ssa.gov/employer/recon/recon.htm* for an explanation of the process. Only after SSA performs these reconciliations does it release earnings data. Moreover, before SSA will provide data matching for another agency, the sources of the data are required to report any corrections and SSA will make any adjustments to the individual earnings data after the end of the respective calendar year.

Appeals of the earnings data obtained from SSA and used in the calculation of the draft D/E rates are limited, however, not just because of the reliability of the data. As the Department noted in the 2011 Prior Rule, there appears to be ''no authority that would require or even allow the Department to question the quality, objectivity, utility, and integrity of SSA's information under the provisions of the Information Quality Act [Pub. L. 106–554, section 515, 44 U.S.C. 3516, note] or otherwise.'' 76 FR 34424. Also, as explained in connection with the 2011 Prior Rule, we would not consider challenges to the accuracy of the earnings data received from SSA because SSA provides the Department with only the mean and median earnings and the number of non-matches for a program. That is, SSA does not disclose students' individual earnings data that would enable the Secretary to assess a challenge to reported earnings. Therefore, an institution's opportunity to challenge a program's earnings information obtained from SSA would be limited to offering corrections to the list of students who completed the program to be provided to SSA. The Secretary would not consider, under the 2011 Prior Rule and the proposed regulations, any challenge to the program's earnings used to calculate the draft D/E rates.

We would, however, provide an adequate opportunity for an institution to correct any inaccuracies in the list of students to be submitted to SSA to obtain the aggregate earnings data, and also to challenge the loan debt of the students who completed the program in the applicable cohort period that is used to calculate the rates, along with the Department's actual computation of the D/E rates. In addition, and as explained further in ''§ 668.406 *D/E rates alternate earnings appeals and showings of mitigating circumstances,''* we recognize that this process must provide an institution an adequate opportunity to present and have considered rebuttal evidence of the earnings data, and the alternate earnings appeal process provides that opportunity.

Non-Federal negotiators asked the Department a number of questions about the usefulness of SSA earnings data given the possibility of non-matches between the students who completed a GE program during the applicable cohort period and available earnings information.[61] We do not believe this possibility would affect in any significant way the accuracy of the calculations, because we believe that non-matches would be infrequent. For instance, for the 2011 GE informational rates calculated under the 2011 Prior Rule and released in June 2012, for students who completed GE programs in fiscal year 2007 and 2008, the match rate was approximately 98 percent. And, with the proposed change to include in the calculation only students who received title IV, HEA program funds, that match rate is likely to be higher since all students who received title IV, HEA program funds have gone through an SSA matching protocol before being determined eligible to receive title IV, HEA program funds. Accordingly, we believe that the process proposed in § 668.405 would result in useful and reliable data that the Secretary could then use to calculate a GE program's D/E rates.

Although we fully expect to rely on SSA data, the proposed regulations would also allow the Department, as an alternative, to obtain earnings information from other Federal agencies. We have included this provision to ensure that the Department can implement the proposed regulations even if unforeseen circumstances arise that preclude obtaining earnings information from SSA.

One of the non-Federal negotiators proposed that, in the event there are non-matches, the Secretary remove a corresponding number of loan debts that reflect an average loan debt for the students on the list, rather than a corresponding number of the highest loan debts from the D/E rates calculation. Because SSA only identifies the number of students in a program for whom no match was established and does not identify those individuals specifically, the Department would not know the actual loan debts for a student whose earnings were not matched by SSA. By using that number of non-matches to remove the students with the highest loan debts from the D/E rates, consistent with the 2011 Prior Rule, we are proposing the most conservative approach to avoid overstating the mean and median loan debt for a program for the calculation of the draft D/E rates. Given that there is a 98 percent match rate, we do not expect that removing the highest loan debts in these circumstances will distort the resulting D/E rates.

We note that the 2011 Prior Rule provided that the Department would remove the highest loan debts in situations where SSA was not able to match students and earnings for failing programs only. We think the better approach is to apply this rule for all GE programs being evaluated, whether they have failing, zone, or passing rates, to

[61] The Department has had years of experience with matching student data received on FAFSAs with SSA data, and stated that it expected the incidence of non-matches under the 2011 Prior Rule would be less than 2 percent of all students for whom it sought earnings data from SSA. 76 FR 34401. Actual experience with matches already conducted has been consistent with that expectation.

ensure fairness and consistency in the calculations across all programs.

Although the 2011 Prior Rule specified that an institution would have 30 days to submit corrections to the list of students, to ensure that institutions have sufficient time to review the lists and submit their corrections, we are proposing that an institution have a period of 45 days in which to submit its corrections to the list of students provided by the Secretary.

Additionally, proposed § 668.405 would clarify several items that were not included in the 2011 Prior Rule, providing for clearer and more transparent corrections and challenge processes. The proposed regulations would provide that the Department would identify, on the initial list of students provided to the institution, those students the Department would exclude under § 668.404(e) and the reasons for the exclusion. This would permit the institution to confirm that the students the Department proposes to exclude should in fact be excluded from the list submitted to SSA.

The proposed regulations would also provide that the burden of proof with respect to a correction or challenge lies with the institution. This burden is routinely required by regulations governing challenges to institutional CDRs, on which this challenge process is modeled. 34 CFR 668.204(a)(4), 668.208(c)(1), (f)(2).[62]

Section 668.405 would clarify the submission requirements that institutions must meet for a proposed correction to the list of students or challenge to draft D/E rates. Outlining these conditions in the regulations would ensure that institutions have notice of the requirements that apply to their correction and challenge submissions.

And, finally, in order to provide for finality to the challenge process, and to ensure the timely issuance of final D/E rates, we have proposed that an institution that does not timely challenge the draft D/E rates within 45 days of receiving the rates waives any objection to those rates and that an institution may submit only one challenge to the loan debt information the Secretary uses to calculate the draft D/E rates. As we have stated previously, the limitation on one challenge does not preclude an institution from challenging the inclusion of a student on another list or in another cohort.

[62] The same requirements have been applied for many years to the calculation of CDRs under prior standards. See, e.g., 34 CFR 668.185(a)(4), 668.187(e)(1), 668.189(c), and 668.189(f)(1) (2001).

Section 668.406 D/E Rates Alternate Earnings Appeals and Showings of Mitigating Circumstances

Current Regulations: Under § 668.7(g) of the 2011 Prior Rule, an institution would have the opportunity to appeal a GE program's failing debt-to-earnings ratios by submitting alternate evidence of earnings of students in the applicable cohort period. Institutions could obtain such evidence from State earnings data or BLS data (for a limited time period only) or could conduct a survey of the GE program's former students in accordance with standards developed by the National Center for Education Statistics (NCES). Through the appeal, an institution could demonstrate that, using the alternate earnings data obtained through one of the permitted methods, the GE program meets a passing debt-to-earnings standard based on the alternate earnings data. Section 668.7(g) of the 2011 Prior Rule also specifies procedures an institution must follow, including deadlines an institution must meet, when making an alternate earnings appeal.

Under the 2011 Prior Rule, a program's debt-to-earnings ratios are calculated based on the outcomes of all of the individuals who completed the program, rather than only the students who received title IV, HEA funds.

Proposed Regulations:

Alternate Earnings Appeals

As under the 2011 Prior Rule, under the proposed regulations, an institution would be permitted to make an alternate earnings appeal of final D/E rates that are failing. The proposed regulations would also permit an institution to submit an appeal any year the final D/E rates are in the zone. If the institution fails to submit a timely appeal, the GE program's rates for that year become final.

In submitting an alternate earnings appeal under the proposed regulations, an institution would seek to demonstrate that the earnings of students who completed the GE program in the applicable cohort period are sufficient to pass the D/E rates measure. Unlike under the 2011 Prior Rule, the institution would base its appeal only on alternate earnings evidence from a State earnings database or an earnings survey conducted in accordance with requirements established by NCES, and not on earnings information from BLS.

Under proposed § 668.406(a)(3), for the purpose of an alternate earnings appeals based on a survey, the Secretary would publish in the **Federal Register** an Earnings Survey Form developed by NCES. The Earnings Survey Form would be a model field-tested sample survey that could be used by an institution in accordance with the survey standards that the institution would be required to meet to guarantee the validity and reliability of the results. The survey standards would be developed by NCES specifically for the alternate earnings survey appeal, would include such items as a required response rate or subsequent nonresponse bias analysis, and could differ slightly from the general NCES standards utilized under the 2011 Prior Rule. Although use of the sample survey would not be required, and the Earnings Survey Form would be provided by NCES as a service to the institutions, the institutions would be required to adhere to the survey standards outlined in the form.

Under the proposed regulations, the institution would certify that the survey was conducted in accordance with the requirements of the NCES Earnings Survey Form, and submit an examination-level attestation engagement report prepared by an independent public accountant or independent governmental auditor, as appropriate, that the survey was conducted in accordance with the standards outlined in the NCES Earnings Survey Form. As with other attestations institutions are required to submit to the Department, the proposed regulations would require that the attestation meet the standards contained in the GAO's Government Auditing Standards promulgated by the Comptroller General of the United States (available at *www.gao.gov/yellowbook/overview*), and with procedures for attestations contained in guides developed by and available from the Department's Office of Inspector General.

The proposed regulations provide that the survey must include all of the students who received title IV, HEA program funds and who completed the program during the applicable cohort period.

The second alternate earnings appeal method described in the proposed regulations would allow an institution to make an appeal based on State earnings data obtained from one or more State-sponsored data systems. Section 668.7(g)(2) of the 2011 Prior Rule allowed institutions to appeal their debt-to-earnings ratios by submitting alternate earnings evidence derived from State-sponsored data systems, such as State longitudinal data systems and State workforce agency systems. Under proposed § 668.406(a)(4), for alternate earnings appeals based on earnings

information in State data systems, as under the 2011 Prior Rule, institutions would only be permitted to use this alternative if the institution was able to demonstrate that it had obtained alternate earnings data for a minimum number of students. Under the 2011 Prior Rule, an institution must obtain the data for more than 50 percent, and more than 30, of the students who completed the GE program during the applicable cohort periods, without regard to whether they had received title IV, HEA program funds. Under the proposed regulations, in obtaining earnings data, the institution would be required to submit to the administrator of the State-sponsored system a list of the students who received title IV, HEA program funds and who completed the GE program during the applicable cohort period.

Under this method, the institution would be required to demonstrate that matches were obtained for more than 50 percent of all of the students on the list submitted to the State administrator and that the number of matched students is 30 or more.

Under proposed § 668.406(a)(5), to pursue an alternate earnings appeal, the institution would notify the Secretary of its intent to submit an appeal no earlier than the date the Secretary provides the institution with the GE program's draft D/E rates and no later than three business days after the Secretary issues the program's final D/E rates, as compared to the 2011 Prior Rule, which provided an institution 14 days after receiving the final rates to submit the notice of intent to appeal. The institution would then be required to submit all supporting documentation for the appeal no later than 60 days after the Secretary issues the final D/E rates.

In making any alternate earnings appeal, the institution would be subject to the conditions for corrections, challenges, and appeals under proposed § 668.405(h), relating to requirements such as the format and completeness of the evidence provided to support the appeal.

If an institution timely files an alternate earnings appeal, during the appeal process, it would not be subject to any of the requirements that would otherwise be triggered by the final D/E rates as provided in proposed § 668.403, regarding eligibility, and proposed § 668.410, regarding the student warning.

Under the proposed regulations, if the appealed final D/E rates were made public, they would be noted as under appeal, and the rates would be revised, if needed, based on the Secretary's decision on the appeal. If the Secretary determines that the institution's appeal is not sufficient to warrant revising the final D/E rates, the Secretary would notify the institution and the D/E rates under § 668.409(a) would remain the final D/E rates for the program for the award year. If the Secretary determines that the appeal is sufficient to warrant revising the final D/E rates, the Secretary would recalculate the rates and notify the institution that the recalculated D/E rates are the final D/E rates for the program.

Showing of Mitigating Circumstances

The proposed regulations would also provide that, if a program is failing or in the zone under the D/E rates measure, the institution may demonstrate mitigating circumstances by showing that less than 50 percent of all individuals, both those who received title IV, HEA program funds and those who did not, who completed the program during the applicable cohort period incurred any loan debt (as defined in proposed § 668.404(d)(1)) for enrollment in the program. If the institution is able to make such a demonstration, the program would be deemed to pass the D/E rates measure. However, the final D/E rates identified in the notice of determination that were based solely on the students who completed the program and received title IV, HEA program funds would remain the program's final D/E rates and would be annotated to reflect that the institution's showing of mitigating circumstances was accepted and that the program was deemed to be passing.

To make a showing of mitigating circumstances, an institution would calculate the program's ''borrowing rate'' by:

Step 1. Determining the number of individuals, including students who did not receive title IV, HEA program funds, who completed the program during the applicable cohort period;

Step 2. Of all of the individuals described in Step 1, determining the number who incurred loan debt for enrollment in the program; and

Step 3. Dividing the number in Step 2 by the number in Step 1.

If the borrowing rate for the program is less than 50 percent, the program would be deemed to pass the D/E rates measure.

When making a showing of mitigating circumstances, the institution would have to submit a certification signed by its chief executive officer identifying the borrowing rate and attesting to its accuracy, as well as any other supporting documentation requested by the Secretary.

Reasons: Proposed § 668.406 would clarify the submission requirements that institutions must meet for an alternate earnings appeal or a showing of mitigating circumstances. Outlining these conditions in the regulations would ensure that institutions have notice of the requirements that apply to their appeal submissions and showings of mitigating circumstances.

Alternate Earnings Appeal

As under the 2011 Prior Rule, institutions would not be permitted to challenge the accuracy of the earnings data provided by SSA and used in the calculation of draft D/E rates because the Department receives the data from SSA in an aggregate form and, therefore, lacks the information required to assess any such appeal. Therefore, as in the 2011 Prior Rule, we are proposing to permit institutions to appeal their D/E rates, which are based on SSA earnings data, by demonstrating that the difference between the mean or median annual earnings the Secretary obtained from SSA and the mean or median annual earnings from an institutional survey or State-sponsored databases warrants revision of the final D/E rates. Consistent with the 2011 Prior Rule, an institution could appeal a GE program's final D/E rates in any year in which the program is failing the D/E rates. However, to account for the addition of the zone, the proposed regulations would also permit an institution to make an appeal in any year in which the program's final D/E rates are in the zone for that year. Because a program's continued performance in the zone can ultimately lead to an ineligibility determination, we believe due process warrants allowing appeals for both failing and zone final D/E rates.

The two primary differences between proposed § 668.406 and the 2011 Prior Rule, with respect to alternate earnings appeals, is that we would consider only the alternate earnings of students who received title IV, HEA program funds for enrollment in the program and we have limited the bases for alternate earnings appeals to surveys conducted in accordance with an NCES Earnings Survey Form and data collected from one or more State-approved databases. First, we consider only the alternate earnings of students who received title IV, HEA program funds because, to align the proposed regulations with the court's interpretation of relevant law in *APSCU* v. *Duncan* and better monitor the Federal investment in GE programs, we have defined ''student'' for the purpose of subpart Q to be an individual who receives title IV, HEA program funds for enrollment in the applicable

program. See ''§ 668.401 Scope and purpose'' for a complete discussion of the definition of ''student.'' Second, unlike in the 2011 Prior Rule, we would not permit an alternate earnings appeal that relies on BLS data because the average earnings reported by BLS for an occupation are not based on the specific earnings of the individuals who completed the GE program at the institution, and therefore would not provide useful information about whether the institution's GE program prepared students for gainful employment in that occupation.

With respect to the use of an earnings survey, the 2011 Prior Rule specified that any earnings survey must be conducted in accordance with NCES standards. NCES is the primary Federal entity responsible for collecting and analyzing data related to education in the United States and other nations. NCES fulfills a congressional mandate to collect, collate, analyze, and report complete statistics on the condition of American education; conduct and publish reports; and review and report on education activities internationally. As a part of fulfilling its mandate, NCES has developed an extensive Statistical Standards Program that consults and advises on methodological and statistical aspects involved in the design, collection, and analysis of data collections. Through this program, NCES has established statistical standards and guidelines to provide high-quality, reliable, useful, and informative statistical information to public policy decision makers and to the public and ensure that field work and reporting standards are met. The NCES standards and guidelines provide clear direction regarding how data should be collected in NCES surveys and the limits of acceptable applications and use. We continue to believe that complying with the NCES standards when conducting the alternate earnings survey is necessary in order to ensure the results of the survey are valid and reliable.

However, as the NCES standards were developed to guide the work of NCES itself, we believe it is important to develop standards specific to the alternate earnings survey. As such, we have proposed that NCES would develop the Earnings Survey Form and publish in the **Federal Register.** The form would have two components. The first component would be standards developed by NCES specific to the alternate earnings survey, which could differ from the existing NCES standards. The second component would be a model alternate earnings survey that NCES would develop for use by institutions. As stated previously, complying with the standards set forth in the Earnings Survey Form would be required for any institution choosing to conduct an alternate earnings survey. However, use of the model survey would be voluntary and it would only be provided by NCES in order to reduce the cost, burden, and implementation timeline of the institutions when conducting the survey.

In addition to the alternate earnings survey, we would permit an alternate earnings appeal using State earnings data. We propose this option in order to provide institutions with an alternative form of appeal as we recognize that some institutions may already have, or could subsequently implement, processes and procedures to access State earnings data. Additionally, we recognize that some institutions may have challenges meeting the requirements of the Earnings Survey Form. However, we are concerned about several limitations of State earnings data. First, not all States have longitudinal data systems that contain earnings data, and, in States that do have such systems, not all institutions have access to them. There are circumstances where an institution may be able to access earnings data directly from a State workforce agency that maintains the earnings data as opposed to accessing it through the State longitudinal data system. However, State or Federal law or regulation, or both, may generally prohibit or significantly complicate the sharing of needed data between the institution and the State agency. Third, some students who complete a GE program can be expected to obtain employment in different States. In order for an alternate earnings appeal based on State data to be comprehensive, an institution may not only have to access its own State's earnings records, but also the records of other States likely to employ the GE program's graduates. Fourth, State earnings databases are typically maintained to support a State's own unemployment insurance program. For example, for any given State, not all employers may be liable for unemployment insurance contributions and not all workers may accrue unemployment insurance benefit rights, in which case those employers or those workers may not be included in the database, and those coverage determinations will vary by State.

For these reasons, we invite comment on whether we should permit the use of data from State databases for alternate earnings appeals. It is important to note that the Department would only accept an alternate earnings appeal using a State data system if the submission contains matches for more than 50 percent of all students on the list submitted to the State administrator and that number of matched students is 30 or more. As in the 2011 Prior Rule, this is to ensure there is a large enough sample for the data to be representative of the GE program as a whole.

We believe that there are more significant and definitive shortcomings associated with the use of BLS data for this purpose. As we said in the 2011 Prior Rule:

The Department has several concerns about using BLS data to calculate the debt-to-earnings ratios. First, as a national earnings metric that includes untrained, poorly-trained and well-trained employees, BLS earnings data do not distinguish between excellent and low-performing programs offering similar credentials.

Second, BLS earnings data do not relate directly to a program—the data relate to a Standard Occupational Classification (SOC) code or a family of SOC codes stemming from the education and training provided by the program. An institution may identify the SOC codes by using the BLS CIP-to-SOC crosswalk that lists the various SOC codes associated with a program, or the institution could identify through its placement or employment records the SOC codes for which program completers find employment.

In either case, the BLS data may not reflect the academic content of the program, particularly for degree programs. Assuming the SOC codes can be properly identified, the institution could then attempt to associate the SOC codes to BLS earnings data. BLS provides earnings data at various percentiles (10, 25, 50, 75, and 90), but the percentile earnings do not relate in any way to the educational level or experience of the persons employed in the SOC code.

So, it would be difficult for an institution to determine the appropriate earnings, particularly for students who complete programs with the same CIP code but at different credential levels. For example, there is no difference in earnings in the SOC codes associated with a certificate program and an associate degree program with the same CIP code. Moreover, because BLS percentiles simply reflect the distribution of earnings of those employed in a SOC code, selecting the appropriate percentile is somewhat arbitrary.

For example, the 10th percentile does not reflect entry-level earnings any more than the 50th percentile reflects earnings of persons employed for 10

years. Even if the institution could reasonably associate the earnings for each SOC code to a program, the earnings vary, sometimes significantly, between the associated SOC codes, so the earnings would need to be averaged or somehow weighted to derive an amount that could be used in the denominator for the debt-to-earnings ratios.

Finally, and perhaps most significantly, BLS earnings do not directly reflect the earnings of the students who complete a program at an institution. Instead, BLS earnings reflect the earnings of workers in a particular occupation, without any relationship to what educational institutions those workers attended. While it is reasonable to use proxy earnings like those available from BLS for research or consumer information purposes, we believe a direct measure of program performance must be used in determining whether a program remains eligible for title IV, HEA funds. The earnings data we obtain from SSA will reflect the actual earnings of program without the ambiguity and complexity inherent with attempting to use BLS data for a purpose outside of its intended scope. 76 FR 34386, 34421

Recognizing these shortcomings, in the 2011 Prior Rule, the Department permitted the use of BLS data as a source of earnings information only for challenges to debt-to-earnings ratios calculated in the first three years of the Department's implementation of § 668.7(g). This was done to address the concerns of institutions that they would be receiving earnings information for the first time on students who had already completed the program, at a point in time at which they could not implement improvements to the program that would affect the student debt burdens. See 76 FR 34423. In order to confirm the accuracy of the data used in a BLS-based alternate earnings appeal, § 668.7(g) of the 2011 Prior Rule also required an institution to submit, at the Department's request, extensive documentation, including employment and placement records.

We believe that the reasons for previously permitting the use of BLS data, despite its shortcomings, no longer apply. Most institutions have now had experience with SSA data on their students' earnings through the 2011 GE informational rates; thus, many programs are no longer in the situation where they would be receiving earnings data for the first time under the proposed regulations. In addition, the proposed regulations provide for a four-year transition period (for example, in award years 2014–2015, 2015–2016, 2016–2017, and 2017–2018), during which the Department would provide the institution an opportunity to have its program's D/E rates calculated using more recent loan debt data. By doing so, the proposed regulations would allow an institution to immediately benefit from changes it makes to the GE program that reduce student debt.

Given the shortcomings of the BLS data in producing a reliable assessment of student outcomes for a particular GE program, the fact that many programs had access to earnings data under the 2011 Prior Rule, and our proposal to include a four-year transition period, we are not including in the proposed regulations a provision permitting the use of BLS data for alternate earnings appeals.

The procedures an institution would be required to follow in making an alternate earnings appeal under the proposed regulations are largely similar to those in the 2011 Prior Rule. Under the 2011 Prior Rule, an institution was required to notify the Secretary of its intent to use alternate earnings no later than 14 days after the institution received its final debt measures. We intend to provide an institution with adequate time to pursue an alternate earnings appeal, while ensuring that the Department can disclose as soon as possible to the public the program's final rates, with appropriate notice that the institution intends to appeal the rates. We are therefore proposing in the regulations that an institution must notify the Secretary of its intent to appeal no later than three business days after the date the Secretary issues the notice of determination with the final D/E rates. The institution must indicate its intent to appeal no earlier than the date the Secretary provides the institution with its draft D/E rates. However, as explained more fully below, the notice deadlines do not limit the time available to an institution to actually conduct the survey. As with the 2011 Prior Rule, the institution would have 60 days after it receives the notice of determination to submit all supporting documentation in support of its appeal. In the interest of providing finality in the alternate appeals process, we would provide that an institution waives its right to appeal failing or zone final D/E rates if it does not submit a timely appeal.

The non-Federal negotiators raised questions about our initial plan during the negotiated rulemaking process to rely solely on earnings surveys conducted in accordance with NCES standards. Specifically, some non-Federal negotiators expressed concern that, given the proposed deadlines in § 668.406 and the effort required to complete a reliable survey under NCES standards, the survey option would not be a viable appeal mechanism. In particular, some of the negotiators raised concerns that smaller institutions would not have the resources necessary to properly conduct the survey.

We note that an institution would be able to begin its survey at any point in time and need not wait for issuance of draft D/E rates to plan and conduct the survey. The proposed regulations simply propose deadlines by which the institution must notify the Department that it will be submitting an appeal and by which it must submit the actual survey results.

To put these deadlines in context, under the proposed regulations, as an example, assume that the first award year for which D/E rates could be issued is award year 2014–2015. Those rates would be based on the outcomes of students who completed a GE program in award years 2010–2011 and 2011–2012 for a two-year cohort period, and 2008–2009, 2009–2010, 2010–2011, and 2011–2012 for a four-year cohort period. SSA would provide to the Department data on the students' earnings for calendar year 2014 approximately 13 months after the end of calendar year 2014, in early 2016. Those earnings data would be used to calculate the D/E rates for award year 2014–2015, and draft rates would be issued shortly after the final earnings data are obtained from SSA. Under our anticipated timeline, an institution that receives draft D/E rates that are in the zone or failing for award year 2014–2015 would receive those draft rates early in 2016. The draft D/E rates for the following year—award year 2015–2016—would be issued in early calendar year 2017. An institution that wished to conduct a survey to support a potential alternate earnings appeal of its D/E rates for award year 2015–2016—the earliest date by which rates that could render the program ineligible would be issued—would base its appeal on student earnings during calendar year 2015 for rates calculated on a two-year cohort period. Students who completed the GE program would know by early 2016 how much they earned, and could be surveyed, as early as the beginning of 2016—more than a full year before the Department would issue final D/E rates for award year 2015–2016, the rates for which the institution would use the survey results. We believe the proposed regulations provide more than adequate time to permit an institution to conduct and present an alternate earnings appeal and that to permit more time would unnecessarily increase the risk that more students would invest their time

and money, and their limited eligibility for title IV, HEA program funds, in a failing GE program.

In response to concerns voiced by some negotiators that the rigor of NCES survey standards would make it prohibitively difficult and expensive for some institutions to conduct an alternate earnings appeal based on survey data, we made two modifications to the alternate earnings appeal process that are reflected in the proposed regulations. First, we have provided that NCES would prepare an Earnings Survey Form, which would contain a model survey that institutions could elect to use. The availability of an already developed model survey would reduce the expense for institutions as they would not need to develop their own survey. Moreover, we have proposed that the form would outline the standards that must be followed even if an institution chose to use a different form. In addition to making a survey-based alternate earnings appeal more accessible, we added to the proposed regulations the option to use earnings data obtained from State-sponsored databases, so that institutions would have more avenues of appeal.

We invite comment on whether the proposed regulations should permit institutions to expand the applicable cohort surveyed under circumstances in which the size of the applicable cohort may make it difficult for the institution to satisfy the survey standards or meet the matching requirements proposed in connection with appeals based on State-sponsored database earnings information. We also invite comment on how we might improve the alternate earnings appeals process so that it is less data intensive, but nonetheless is based on accurate earnings information.

At least one negotiator suggested that, if an institution elects to make an alternate earnings appeal, it should be required to post an appeal bond and should remain subject to at least some of the requirements in proposed § 668.410 otherwise triggered by the final D/E rates, such as the student warning, until the resolution of the appeal. We do not typically require institutions that appeal a limitation or termination proposed on other title IV, HEA program performance grounds to comply with the limitation or post a bond pending resolution of an appeal. For the purpose of the proposed regulations, we do not believe it would be necessary to impose these restrictions before an institution has had its alternate earnings appeal considered and received a decision on the merits of that appeal.

In discussing the procedures for calculating D/E rates under the proposed regulations, some negotiators expressed concern over including only the earnings of students who receive title IV, HEA program funds. As explained in ''§ 668.401 Scope and purpose,'' our focus in the proposed regulations is on students who receive title IV, HEA program funds for enrollment in a GE program. However, we invite comment as to whether institutions should be permitted to include the earnings information of individuals who did not receive title IV, HEA program funds for enrollment in the program, and on what basis. That is, how would D/E rates based on the earnings of individuals who did not receive title IV, HEA program funds demonstrate that the program satisfies the gainful employment requirement for students who did receive title IV, HEA program funds? We also invite comment as to whether, if the earnings information of individuals who did not receive title IV, HEA program funds were included, a successful appeal should result in published recalculated D/E rates for a program, and whether the program should be deemed as passing under the D/E rates measure or if the program should not receive an official result, but also not be subject to any sanctions based on that year's D/E rates.

Showings of Mitigating Circumstances

Several negotiators argued that low-cost, and consequently low-risk, programs where borrowing is largely unnecessary should not be subject to the D/E rates measure because the measure would not accurately reflect the level of borrowing by individuals enrolled in the program and the low cost of the program. The negotiators claimed that, for many low-cost programs, students receiving title IV, HEA program funds constitute only a small, unrepresentative portion of the students in terms of borrowing behavior. They argued that, for these programs, the percentage of students who receive title IV, HEA program funds and incur debt to enroll in the program is significantly greater than the percentage of all students who incur debt to enroll in the program. According to the negotiators, a program in which a majority of students have no debt is unlikely to produce graduates whose educational debts would be excessive because the tuition and costs are likely to be modest and require little borrowing, and therefore would not place the Federal investment in the program at significant risk. To more adequately account for low-cost, low-risk programs, the negotiators suggested that a GE program should pass the D/E rates measure if (1) the median loan debt of all individuals who complete the program in the applicable cohort period (both individuals who received, and who did not receive, title IV, HEA program funds) is zero, or (2) the program has a borrowing rate of less than 50 percent.

Under the proposed regulations, the loan debt component of the D/E rates measure would be calculated as a median, so that a program would have an annual loan payment of $0, and, consequently, passing D/E rates of 0, if less than half of the students who receive title IV, HEA program funds and complete the program during the applicable cohort period are borrowers.

However, because the D/E rates measure assesses only the outcomes of students receiving title IV, HEA program funds, it might not in all cases fully recognize the benefit of programs that present low risk to students and taxpayers. Under the proposed regulations, the D/E rates measure would attribute a student's loan debt to a program, up to the amount of tuition, fees, and equipment and supplies, even though the student could have obtained the loan only to pay for living expenses. As a result, the D/E rates measure might not fully reflect the impact of low costs in reducing the overall debt burden of a program's students. Therefore, in order to fully assess the benefit of programs that do not place students at risk of unaffordable debts, the proposed regulations would permit an institution to demonstrate that a program with D/E rates that are failing or in the zone should be deemed to be passing the D/E rates measure because less than 50 percent of all individuals who completed the program, both those who received title IV, HEA program funds, and those who did not, did not have to assume any debt to enroll in the program. The less than 50 percent standard is appropriate because a borrowing rate of less than 50 percent would mean that the median loan debt of the program is zero.

On the other hand, we recognize that in all cases a program with a borrowing rate of less than 50 percent may not, in fact, be low risk. For example, the majority of students could have alternative resources to pay the program costs, such as employers, State grant programs, or military benefits, or the program could still have a significant number of students who received title IV, HEA program loans for enrollment in the program.

We request specific comment on whether a program that demonstrates a borrowing rate of less than 50 percent should be deemed to be passing the D/

E rates measure and whether and how it may be appropriate to take into account students who do not receive title IV, HEA program funds to make that determination. We also invite comment as to whether the program should receive an official result, and whether the program should be subject to any sanctions on the basis of that year's D/E rates.

In addition, we invite comment on the method that should be used to ensure that borrowing rate showings are based on reliable evidence. Current regulations require an institution to create and maintain for audit and program review purposes records needed to verify data that appear in any report it uses to participate in a title IV, HEA program. 34 CFR 668.24(c)(1)(vi). A borrowing rate showing is a report that an institution would use to participate in title IV, HEA programs, and the institution would, thus, be required to maintain a complete list identifying all individuals included in its borrower rate calculations, as well as records evidencing those individuals' enrollment in the program and the dates on which they completed the program. We seek comment on whether the institution should also be required to submit as part of the showing a modified list of these individuals that would fully identify the students who received title IV, HEA program funds, but provide the list of students who did not receive title IV, HEA program funds in deidentified form, as is now commonly done in program review reports. Such deidentified list would show no more than the individuals' initials and last four digits of the social security number or another numeric identifier.

Finally, we invite alternative proposals to assess whether a program leads to low rates of borrowing.

Section 668.407 Calculating pCDR

Section 668.408 Issuing and Challenging pCDR

Subpart R

Current Regulations: None.

Proposed Regulations: Under proposed §§ 668.407 and 668.408, the Department would use pCDR as a second accountability metric, independent of the D/E rates measure, to determine whether a program remains eligible for title IV, HEA program funds. For a complete discussion of our proposed use of, and standards associated with, the pCDR measure for the purpose of determining a GE program's eligibility for title IV, HEA program funds, see ''§ 668.403 Gainful employment framework.''

Section 435(m) of the HEA provides that an institutional cohort default rate (iCDR) is the percentage of an institution's FFEL and Direct Loan borrowers who entered repayment in a given Federal fiscal year and who defaulted by the end of the second fiscal year following the year in which the borrowers entered repayment, referred to as the CDR monitoring period. 20 U.S.C. 1085(m). Subpart N of part 668 of the regulations currently implements, and typically tracks, the iCDR provisions of section 435(a) and (m) of the HEA, 20 U.S.C. 1085(a) and (m).

Proposed §§ 668.407 and 668.408 provide that the Secretary would generally determine a GE program's pCDR using the same methodologies and procedures used to calculate iCDRs pursuant to section 435(m) of the HEA. 20 U.S.C. 1085(m). These methodologies and procedures are set forth in detail in proposed subpart R of part 668. The proposed pCDR regulations in subpart R would generally mirror the structure of the iCDR regulations in subpart N. Because institutions are familiar with subpart N, proposed subpart R would adopt the text and section designations used in subpart N, with minor changes to reflect the application of the iCDR process to pCDR determinations. Because some provisions in subpart N that are applicable to institutions would not be relevant at the program level, these sections or parts of subpart N have been omitted and reserved in subpart R.

In calculating a GE program's pCDR, the Secretary would consider the students who received a FFEL or Direct Loan for enrollment in the GE program and who entered repayment on those loans during a relevant Federal fiscal year and determine the number of those students who defaulted on those loans in that fiscal year or by the end of the following two fiscal years—the CDR monitoring period. The pCDR measure would use the same fiscal year for establishing the cohort of students and the same CDR monitoring period for determining how many students in the cohort defaulted as is used for iCDR calculations. However, the pCDR measure would be based on a different measurement period and different cohort of students than the proposed D/E rates. Under proposed § 668.404, D/E rates are calculated for a cohort of students who received title IV, HEA program funds, including Federal loans, Federal Pell Grants, and other title IV, HEA program funds, and who completed the program during an applicable cohort period. In contrast, the pCDR measure, like iCDR, would include students who received FFEL and Direct Loans and who entered repayment on those loans during the relevant fiscal year, whether or not they completed the program. FFEL and Direct Loan borrowers generally enter repayment after a six-month grace period that begins when the borrower ceases enrollment on at least a half-time basis. 34 CFR 682.200, 682.209(a)(3) (FFEL Loans); § 685.207(b)(2), (c)(2) (Direct Loans).

A GE program's pCDR would be based on students who (1) enrolled in the GE program, whether or not they completed the program, (2) received one or more FFEL or Direct Loans for enrollment in the program, and (3) entered repayment on one or more of those loans during the fiscal year that precedes by 3 years the year in which the rate is calculated. If 2016, for example, is the first year that pCDRs for GE programs are released under the proposed regulations, the pCDRs would be for the fiscal year 2013 cohort. To calculate the program's pCDR, the Secretary would determine the number of borrowers who entered repayment on their FFEL or Direct Loans between October 1, 2012, and September 30, 2013. The Secretary would then determine how many of those students defaulted by September 30, 2015.

A FFEL Loan would be considered to be in default if a guaranty agency paid a default claim to the FFEL lender on the loan. § 668.502(c)(1)(i). A Direct Loan would be considered to be in default if a borrower failed to make a required installment payment for 360 days. § 668.502(c)(1)(ii). These pCDR provisions would be identical to the corresponding iCDR provisions in § 668.202(c).

Under the proposed regulations, each year, the Secretary would calculate a draft pCDR for each GE program by: (1) Identifying, from information reported by the institution under proposed § 668.411 and from information in NSLDS, a cohort of borrowers who received FFEL or Direct Loans for enrollment in the GE program and who entered repayment during the fiscal year and (2) determining the percentage of those borrowers who defaulted within the pCDR monitoring period. § 668.502(a). If fewer than 30 borrowers entered repayment in the fiscal year, the cohort of borrowers would include, in addition to the borrowers who entered repayment in the fiscal year, borrowers who entered repayment in the two preceding fiscal years. In that case, the program's draft pCDR would be based on the total cohort from the three years. § 668.502(d)(2).

As set forth in proposed § 668.504, the Department would notify an institution of a program's draft pCDR and provide

a report listing the students included in the cohort and the loan details that were used in the calculations. The report would allow the institution an opportunity to challenge the information used to calculate the draft pCDR. The pCDR challenge process mirrors the iCDR process, as follows. The institution would have 45 days to submit an ''incorrect data challenge'' to the accuracy of the data used to calculate the draft pCDR. For most FFEL loans, the institution would send its incorrect data challenge to the relevant guaranty agency. For Direct Loans and for FFEL loans held by the Department, the institution would send its incorrect data challenge to the Department's loan servicer from whose records the data were obtained. The guaranty agency or Departmental servicer would be required to respond to the institution's challenge. The Department would review the challenge and response and either accept the challenge and recalculate the program's pCDR, or reject the challenge and notify the institution of the rejection.

If a GE program's draft pCDR is 30 percent or greater for the third fiscal year following two consecutive years for which the official pCDR was 30 percent or greater, the institution would be able to submit a ''participation rate index'' challenge to the draft pCDR for that third year. This challenge rests on the position that the number of students who borrow title IV, HEA program loans for enrollment in the GE program constitutes a small percentage of the program's students. Specifically, if the program's pCDR multiplied by the percentage of title IV, HEA program loan borrowers among all regular students (including students who did not receive title IV, HEA program funds) enrolled in the program is less than 0.0625, the program would not be subject to a loss of title IV, HEA program eligibility on account of a third consecutive year's pCDR of 30 percent or greater. § 668.504(c).

After resolution of a participation rate index challenge or after the date by which such a challenge would have to be made, the Department would issue an official pCDR. Unlike the procedures for issuance of iCDRs, we would not provide this notification electronically.

The institution could request to have the official pCDR adjusted on several grounds, or could appeal the official pCDR, if that pCDR would be the third consecutive year's pCDR of 30 percent or greater. § 668.508. Each of these appeals and requests for adjustment is available to institutions under the iCDR provisions. § 668.208. Most appeals and adjustment options are available for appeals and requests for adjustment of any iCDR. However, iCDR regulations limit the availability of some appeals to those rates that would result in loss of institutional eligibility, and the proposed regulations would similarly allow some appeals only for a pCDR that would subject the GE program to a loss of eligibility under proposed § 668.403, as a result of the third consecutive year's pCDR of 30 percent or greater.

First, the institution would have two possible ways to request an adjustment to the data used to calculate any official pCDR:

- Uncorrected data adjustment: A correction approved as a result of an ''incorrect data challenge'' that was previously approved is not reflected in the official pCDR, § 668.509; and
- New data adjustment: New data used in the calculation of the official pCDR differs from data previously provided to the institution with the program's draft pCDR, and it is inaccurate, § 668.510.

Second, the institution would be able to request that any pCDR be recalculated through two types of appeals:

- Erroneous data appeal: The pCDR should be recalculated because the data previously challenged or newly added are incorrect, § 668.511; and
- Loan servicing appeal: The pCDR should be recalculated because the servicer failed to perform certain due diligence activities before the loan defaulted, § 668.512.

Third, the institution would be able to avoid a loss of program eligibility under proposed § 668.403 through a successful appeal of a pCDR that would have resulted in loss of eligibility on any of the following four grounds:

- Economically disadvantaged appeal: Of all the students enrolled in the program on at least a half-time basis (including those who did not receive title IV, HEA program funds), (a) two-thirds were either eligible to receive at least half the maximum Pell Grant or had a family income below the HHS poverty guideline standard for that family size, and (b) of these students, at least 70 percent timely completed the degree program, transferred to a higher credentialed program, were still enrolled, or entered military service, or, for non-degree programs, at least 44 percent within a year had obtained employment in the occupation for which the program was offered or entered military service, § 668.513;
- Participation rate index appeal: Similar to the participation rate index challenge previously described for draft pCDR, except it would be submitted after official pCDRs have been calculated, § 668.514;
- Average rates appeal: Two or more of the pCDRs on which loss of eligibility would be based had been calculated as an average rate under § 668.502(d)(2)(i) because fewer than 30 borrowers entered repayment in the fiscal year, and the rates for any two of those ''averaged rate'' years would pass the pCDR measure if calculated based only on the borrowers who entered repayment in each of those two fiscal years, § 668.515; and
- Thirty-or-fewer borrowers appeal: The total number of borrowers who comprise the pCDR cohorts for the three years at issue was 30 or fewer, § 668.516.

Reasons: Our reasons for proposing § 668.407, § 668.408, and subpart R of part 668, and the use of pCDR as a new and independent GE measure, are described in ''§ 668.403 Gainful employment framework.'' We also discuss there our reasons for proposing adoption of the iCDR calculation, appeal, and challenge procedures for the pCDR measure. The proposed consequences associated with a GE program's pCDR, and our related reasoning, are described in ''§ 668.403 Gainful employment framework'' and ''§ 668.410 Consequences of GE measures.''

We propose to adopt the challenges, adjustments, and appeals for pCDR that are currently available for iCDR and, in several instances, that are based on provisions of the HEA itself. Two of those options—participation rate index challenges and appeals, and economically disadvantaged appeals—include consideration of individuals who did not receive title IV, HEA program funds. We invite comment as to whether we should modify those provisions for pCDR to include only those students who receive title IV, HEA program funds.

Section 668.409 Final Determination of GE Measures

Current Regulations: Section 668.7(f) of the 2011 Prior Rule provides that the Secretary would notify an institution of any draft results of the debt measures for its GE programs that are not challenged, challenged unsuccessfully, or recalculated after a successful challenge. These results would be the final debt measures for the program.

The Secretary would notify an institution if it were to become ineligible. If an institution submits an alternate earnings appeal of a program's final debt-to-earnings ratios and it is denied, the Secretary would also separately notify the institution and provide reasons for the denial.

Proposed Regulations: Proposed § 668.409 provides that the Secretary would issue a separate notice of determination for the D/E rates measure and for the pCDR measure for each GE program at an institution. In comparison, under the 2011 Prior Rule, information regarding all of the debt measures would be provided in a single notice instead of separately for each metric.

The notice of determination for the D/E rates measure would be issued for each award year that D/E rates are calculated for a program, after the period for the D/E rates challenge process under § 668.405 has passed, or any challenges are resolved. The notice would include a program's final D/E rates, the effective date of the determination, and whether, based on the program's final D/E rates:

- The program is passing, failing, or in the zone as determined under proposed § 668.403;
- The program is ineligible as determined under proposed § 668.403 and, if so, the consequences as provided under proposed § 668.410;
- The program could become ineligible based on its final D/E rates for the next award year;
- The institution must provide warnings about the program to students and prospective students as provided under proposed § 668.410; and
- For a program that is failing or in the zone under the D/E rates measure, instructions on how it may make an alternate earnings appeal or make a showing of mitigating circumstances under proposed § 668.406.

The notice of determination for the pCDR measure would be issued each year, after the period for the pCDR appeals and adjustment process under proposed § 668.408 and subpart R has passed, or any appeals or requests for adjustment are resolved. The notice would include the program's official pCDR, the effective date of the determination, and whether, based on the program's official pCDR:

- The program is passing or failing as determined under proposed § 668.403;
- The program is ineligible as determined under proposed § 668.403 and, if so, the consequences as provided under proposed § 668.410;
- The institution must provide warnings about the program to students and prospective students as provided under proposed § 668.410; and,
- For a program that has failed the pCDR two consecutive years or three consecutive years, instructions on how it may appeal or seek an adjustment to its official pCDR under proposed § 668.508.

If an institution were to pursue an alternate earnings appeal of a program's final D/E rates, or a showing of mitigating circumstances, under proposed § 668.406, or an appeal or request for adjustment with respect to a program's official pCDR under proposed § 668.508, a subsequent notice would be issued with the Department's determination. If the appeal or adjustment is successful, the notice would provide the recalculated final D/E rates or official pCDR along with information regarding the program's status. If the showing of mitigating circumstances is successful, the institution would be notified. If an appeal, showing, or adjustment is denied, the notice would provide the reasons for the denial. The notice of determination, or subsequent notice after any appeals, showings, or adjustments are resolved, would constitute the final decision of the Secretary and would not be subject to further administrative review.

The notice under the 2011 Prior Rule, although similar, would provide less information than the notice under the proposed regulations. Specifically, the Prior Rule's notice would not include an effective date, categorize a program as one that satisfies or is failing the debt measures, provide information on any consequences, or notify an institution that a program is ineligible, although an institution would be notified separately of a program's ineligibility. Also, in contrast to the proposed regulations, the notice under the 2011 Prior Rule would not provide instructions on appealing or seeking adjustments to the results of a GE measure. If an appeal was denied, an institution would be notified separately with the reasons for the denial.

Reasons: As in § 668.7(f) of the 2011 Prior Rule, proposed § 668.409 would establish an administrative process to determine, and notify an institution of, a program's final GE measures. Separate notices of determination would be issued for the D/E rates and pCDR measures because the calculation of the D/E rates and pCDR will likely occur at different times during the year.

In comparison to the 2011 Prior Rule, the notice of determination under proposed § 668.409 would provide more detailed information in a single notice for each metric so that an institution could better and more easily understand the results of its GE measures under the proposed regulations, when they would be effective, whether the results are final determinations or could be appealed or adjusted or could be the subject of a showing of mitigating circumstances, the consequences of the results, and any actions an institution would be required to take and by what date. With respect to adjustments, appeals, and showings of mitigating circumstances, the notification would include instructions to help ensure that institutions have a clear understanding of the process.

Section 668.410 Consequences of GE Measures

Current Regulations: Under § 668.7(j) and (l) of the 2011 Prior Rule, an institution would be subject to one or more restrictions with respect to a failing program, a program that was made ineligible under the 2011 Prior Rule, or a program that was voluntarily discontinued at the time it was failing.

Debt Warnings

For a failing program, an institution would be required to provide currently enrolled and prospective students with debt warnings that would vary in urgency based on whether the program failed the GE measures for a single fiscal year (''first year warning'') or for two consecutive or two out of the three most recent fiscal years (''second year warning''). The warnings would be required to be prepared in plain language and in an easy-to-understand format. Further, to the extent practicable, institutions would be required to provide alternatives to English language warnings for those students for whom English is not their first language.

In the first-year warning, an institution would be required to explain the debt measures, show the amount by which the program failed to meet the standards, and describe how the institution plans to improve the program's performance under the debt measures. The institution would be required to deliver the first-year warning orally or in writing directly to students in accordance with procedures established by the institution. ''Directly to students'' would include communicating with the student in-person, telephonically, as a part of a group presentation, or by email to the student's email address. In the case of an oral warning, the institution would be required to document how the information was provided, any materials used, and that the student was present.

In the stronger second-year warning, an institution would be required to include the same information as the first-year warning and, additionally, a clear and conspicuous statement that a student who enrolls or continues in the program should expect to have difficulty repaying his or her student loans, an explanation of the actions the institution plans to take in response to the second failure, if the institution

plans to discontinue the program, the timeline and options available to students, the risks associated with enrolling or continuing in the program, including the potential consequences of ineligibility and options available to students in such an event, and resources available to students, including *www.collegenavigator.gov*, to research other educational options and compare program costs. An institution would be required to provide the second-year warning in writing and display the required information on the program's main Web page and in all promotional materials. An institution would have the option to include the second-year warning in the required disclosures under the 2011 Current Rule. The second-year warnings would have to be provided until the program meets one of the debt measures for two out of the three most recent fiscal years.

For students enrolled in a failing program, an institution would be required to provide the relevant debt warning as soon as administratively feasible but no later than 30 days from the date that the Secretary notifies the institution that the program failed the debt measures. With respect to prospective students, an institution would be required to provide the relevant warning at the time the student first contacts the institution requesting information about a failing program. If the prospective student intends to use title IV, HEA program funds for attendance in the program, an institution would be prohibited from enrolling the prospective student in the program until three days after providing the debt warning, and, if more than 30 days pass from when the debt warning was first provided and the date the student seeks to enroll in the program, the institution would be required to provide the debt warning again and wait three days from that date before enrolling the student.

Ineligibility for Title IV, HEA Program Funds

Except as provided in § 668.26(d) of the 2011 Prior Rule, an institution would be prohibited from disbursing title IV, HEA program funds to students enrolled in a program that becomes ineligible as a result of failing to meet the minimum standards for three out of the four most recent fiscal years.

Period of Ineligibility

A program that becomes ineligible under the 2011 Prior Rule, or a failing program that is voluntarily discontinued, would remain ineligible until the institution reestablishes the eligibility of that program.

For an ineligible program, or a program that is substantially similar to an ineligible program, an institution would not be able to reestablish eligibility until the end of three fiscal years after the fiscal year in which the program is made ineligible. A program would be substantially similar to an ineligible program if it has the same credential level and first four digits of the CIP code.

For a voluntarily discontinued failing program, an institution would not be able to reestablish eligibility until the end of two fiscal years after the fiscal year in which the program is discontinued if it is discontinued at any time after the program is determined to be failing but no later than 90 days after the date that the Secretary notifies the institution that it would be required to provide a second-year debt warning with respect to the program. If the program is voluntarily discontinued more than 90 days after the date that the Secretary notifies the institution that it would be required to provide a second-year debt warning, an institution would not be able to reestablish eligibility until three fiscal years after the fiscal year in which the program is discontinued. A failing program would be deemed as voluntarily discontinued on the date the institution provides written notice to the Secretary that it relinquishes title IV, HEA program eligibility.

Proposed Regulations: Although the proposed regulations and the 2011 Prior Rule provide for similar consequences, the circumstances under which they would be imposed and their specific requirements differ in many respects.

Student Warning

Under proposed § 668.410(a), within 30 days of receiving a notice of determination under § 668.409 stating that a GE program could become ineligible based on its final D/E rates for the next award year or based on its next official pCDR, an institution would be required to provide a written warning directly to each student enrolled in the program and include the student warning on the program's disclosure template under proposed § 668.412. The following statement would be required to be included in the student warning:

''You may not be able to use federal student grants or loans to pay for this institution's program next year because the program is currently failing standards established by the U.S. Department of Education. The Department set these standards to help ensure that you are able to find gainful employment in a recognized occupation and are not burdened by loan debt you may not be able to repay. A program that doesn't meet these standards may lose the ability to provide students with access to federal financial aid to pay for the program.''

The proposed regulations would permit the Secretary to modify the statement or establish an alternative statement in a notice published in the **Federal Register,** after providing the general public and Federal agencies with an opportunity to comment in connection with the approval process under the Paperwork Reduction Act of 1995 (PRA). Before finalizing the statement and the manner in which it would be presented, the Department would conduct consumer testing to ensure that the content of the statement advances the goals of the warning, the language is understandable for the intended audience, the manner of delivery is effective, and the warning is, on the whole, useful for consumers.

As a part of the student warning, the institution would also be required to describe the options available to enrolled students to continue their education at the institution, or at another institution, in the event the program loses its eligibility for title IV, HEA program funds and inform students as to whether or not, if the program becomes ineligible, it would:

- Allow the student to transfer to another program at the institution;
- Continue to provide instruction in the program to allow the student to complete the program; and
- Refund the tuition, fees, and other required charges paid by, or on behalf of, the student for enrolling in the program.

The proposed regulations would require that the warning be given directly to the student, meaning that the warning must be hand-delivered to the student individually or as part of a group presentation, or must be sent to the primary email address used by the institution for communicating with the student. Further, as under the 2011 Prior Rule, to the extent practicable, institutions would be required to provide the warnings in alternative languages to students whose first language is not English.

Proposed § 668.410(a)(2) would require the institution to provide this same warning to a prospective student at the time the prospective student first contacts, or is contacted by, the institution about a GE program. Further, the institution would not be able to enroll, register, or enter into a financial commitment with the prospective student for the program until:

- Three business days after the warning was first provided; or

• If more than 30 days pass from the date the warning is first provided, three business days after the institution provides another warning.

Ineligibility for Title IV, HEA Program Funds

If a program loses title IV, HEA eligibility, under proposed § 668.410(b)(1), except for the limited disbursements permitted under 34 CFR 668.26(d), an institution would be prohibited from disbursing title IV, HEA program funds to students enrolled in the program.

Period of Ineligibility

For an ineligible program, voluntarily discontinued failing or zone program, or program that is substantially similar to an ineligible program or voluntarily discontinued failing or zone program, an institution would not be able to reestablish title IV, HEA program eligibility under § 668.414 for three calendar years. In the case of an ineligible program, this three-year period would begin on the date specified in the notice of determination, under § 668.409, that the program is ineligible. For a voluntarily discontinued program, the three-year period would begin on the date the institution provides written notice to the Secretary that it relinquishes title IV, HEA program eligibility.

Reasons: We have two overarching goals for the proposed regulations: (1) To establish an accountability framework for GE programs and (2) to increase the transparency of GE program student outcomes. To achieve these goals, we have proposed accountability metrics—D/E rates and pCDR—that we believe are reasonable and valuable measures of a program's student outcomes. In proposed § 668.410, we propose consequences that would be imposed on institutions based on the results of their GE programs under the accountability metrics that serve both our accountability goal and our transparency goal.

The proposed regulations would largely adopt the consequences set forth in the 2011 Prior Rule. They differ from the 2011 Prior Rule in the timing and content of the language for the student warning and in the period of time before which ineligible programs can reestablish title IV, HEA program eligibility. From a policy perspective, the significant differences are largely attributable to our desire, consistent with our transparency goals, to streamline the student warning process so that the message is more accessible to students and prospective students, to facilitate institutional compliance by reducing administrative burden, and to motivate continuous improvement by institutions with respect to their GE programs or face termination of program eligibility for title IV, HEA program funds.

Student Warning

The accountability framework of the proposed regulations reflects our belief that, particularly in the initial years of the proposed regulations, institutions should be given time and incentive to improve those programs that are not among the very worst, but still have outcomes that do not meet minimum acceptable levels of performance. We recognize, however, that some of these programs may not improve, or improve sufficiently, and may consequently lose eligibility for title IV, HEA program funds. A program's loss of eligibility could make it impossible for some students to complete that GE program. Given the adverse effects on students that may arise from a program's loss of title IV, HEA program eligibility, we believe that students should be warned if a program could lose eligibility based on its next result under one or both of the GE measures. Such warnings would inform decisions of currently enrolled students with respect to their continuing financial investment in the program, and would enable prospective students to make informed decisions when choosing among similar programs offered at one institution, or at several institutions.

The proposed student warning differs from the 2011 Prior Rules in that there would only be one type of warning instead of two, and the warning would only be required when a GE program could become ineligible based on its final D/E rates or official pCDR for the next year instead of after a first failure. Additionally, the proposed student warning focuses more narrowly than the warnings under the 2011 Prior Rule on the information that prospective and enrolled students urgently need to have in considering whether to begin or continue enrollment in a program facing the possible loss of eligibility.

The proposed regulations include the text that institutions would use for the student warning in order to standardize the warning and ensure that the necessary information is conveyed to students. This particular language was chosen because we believe it would be simple and easy to comprehend for students. However, we intend to conduct consumer testing to better understand how different groups of students would receive and process this information, and may modify our proposed language based on the results of that testing. As proposed, the warning would alert both prospective and enrolled students that a GE program may lose eligibility for title IV, HEA program funds and explain the implications of ineligibility. In addition, for enrolled students, the warning would indicate the options that would be available to continue their education at the institution or at another institution, if the program lost its title IV, HEA program eligibility.

We believe this simplified warning and statement of options provides more useful information than what was required by the 2011 Prior Rule. The statement that a program may lose the ability to provide students with access to title IV, HEA program funds is critical for students so that they can use that information to decide whether and when to enroll in a similar, passing program at another institution or in a passing program at the same institution. Requiring that the warning be provided directly to a student is intended to make it more likely that the student will benefit from the information. Further, requiring that at least three days must pass before the institution could enroll a prospective student would provide a ''cooling-off period'' for the student to consider the information contained in the warning without direct pressure from the institution, and also provide the student with time to consider alternatives to the program either at the same institution or at another institution.

The negotiators representing students, legal aid organizations, and State Attorneys General generally urged the Department to revise the draft regulations to make the student warning more understandable and more widely available. They believed that institutions should begin providing the student warning earlier than in the year before the GE program could become ineligible, recommending that students should also receive this information in any year in which a GE program is identified as a zone program. They argued that as soon as it is available, students should have any information that indicates that a program for which they are spending significant time and money, including title IV, HEA program funds, may not ultimately be a good investment. Similarly, some negotiators proposed that a less stringent warning be required for a zone program that is not at risk of losing eligibility in the following year, and suggested that the Department issue an alert instead of a warning when a program first enters the zone, with the alert or warning becoming stronger as the program moves closer to becoming ineligible.

Additionally, the negotiators were concerned that bad actors would undermine the value of the student warning by hiding the information or downplaying the message of the warning. They suggested that the Department require institutions to post the warning in classrooms where the GE program is offered, in the financial aid office, and in other places where students would likely see it.

With respect to the language of the student warning, the negotiators representing consumer advocates raised concerns that specifying language to be included in the student warning would limit the Department's ability to alter the required text to make it more meaningful based on experience. They urged the Department to commit to use focus groups to test and refine the language and format of the warning to ensure that students, including those with limited English proficiency or lower literacy levels, would understand the content and implications.

Lastly, negotiators representing consumer advocates urged the Department to require an institution to provide the warning to a prospective student at the time that the student first contacts, or is contacted by, the institution about the GE program and before a student signs an enrollment agreement or otherwise makes a financial commitment for the program. They noted that in many cases, an institution will contact a prospective student before the student requests information from the school. For example, some institutions contact a prospective student visiting the Web site for a particular GE program via a live chat. The negotiators stated that it was important to capture this type of contact in the regulations in order to prevent schools from convincing a student to commit to the program before giving them the required warning. Along these same lines, these negotiators argued that it is critical for prospective students to receive the warning before they sign an enrollment agreement, as opposed to at the time they sign, because once a student has committed to signing, the warning would have little to no effect.

Although the other negotiators generally agreed that it is important to warn students when a program is close to losing eligibility for title IV, HEA program funds, some raised concerns about the Department's approach. With regard to the proposal that institutions would have to describe any options available to students to continue their education at another institution in the event that the program loses eligibility for title IV, HEA program funds, one of the negotiators noted that it is not always possible for a student to transfer to another institution. The negotiator pointed out that, particularly in rural areas, there may not be another institution within close proximity to the student that is offering a similar GE program. Additionally, the negotiator noted that, even if there were another institution nearby that was offering a similar program, there is no guarantee that the institution would allow the student to transfer into the program.

Another negotiator noted that the warning could be problematic for institutions in which the typical program length is one and a half academic years. The negotiator raised concerns that in those cases, a warning telling students that they may not be able to use Federal student grants or loans to pay for the program could be misleading because students enrolled in the program could complete the program before it lost eligibility. The negotiator argued that providing the warning to enrolled students in these cases could cause students to leave the program unnecessarily when they could have completed and achieved their academic goals. Similarly, some of the negotiators were concerned about having to provide the warning to prospective students who would not be affected by a program's loss of title IV, HEA program eligibility, such as foreign students. They recommended adding language specifying that the warning must only be provided to a student who could be affected by a program's loss of eligibility before they are likely to complete the program.

We have considered the concerns raised during the negotiations about the student warning, and we have taken into account many of the suggestions and concerns in the proposed regulations. Although we understand the position that students should receive a warning or, at a minimum, a lower-level alert when a GE program is in the zone, we believe that it is important, particularly in the initial years of the rule, to give institutions a period of time to improve, without restrictions, those programs that are either in the zone or not at risk of losing eligibility under the GE measures in the following year. Similarly, in future years, sufficient time should be allowed without restrictions to determine whether a program's poor results are atypical or whether they reflect a true decrease in its value. Accordingly, we would limit instances where a warning would be required to potential losses of eligibility under the D/E rates or the pCDR measure in the following year. We believe that using one warning instead of the two different warnings provided in the 2011 Prior Rule would reduce the complexity of this requirement, facilitating institutional compliance so that it is more likely that students receive this valuable information when they need it most.

The proposed regulatory language is also intended to alleviate concerns that institutions may try to downplay the warnings. First, we have added language clarifying that providing a written warning ''directly'' to enrolled students means hand-delivering the warning to a student individually or as part of a group presentation, or sending the warning to the primary email address used by the institution for communicating with the student about the program. We believe that this addition would make it clearer to institutions what they are required to do and better ensure that students receive the important message intended to be conveyed by the warning. We invite comment on methods to make it even more likely that students would receive the warning but at the same time would not create overly burdensome requirements for institutions.

Second, we have added proposed language clarifying that the warnings must be given to a prospective student when the student first contacts the institution or is contacted by the institution with respect to a GE program and requiring institutions to provide the warning before a student enrolls, and not at the time of enrollment, to prevent an institution from manipulating students into committing to enroll before it provided the required warning. An institution should maintain records that showed the warning was provided prior to a student enrolling at an institution. § 668.24(a)(3).

We note, also, that under proposed § 668.412(b)(2), within 30 days of receiving notice from the Secretary that the student warning is required for a GE program, an institution would be required to update the program's disclosure template to include the warning. We believe that incorporating the student warning into the disclosure template, which has a set format and standard text and which must be provided via a prominent, readily accessible, clear, conspicuous, and direct link from the program's Web site would limit manipulation of the warning text or presentation to prospective students. For a prospective student, we would also require the institution to obtain the student's signature on a written disclosure, as this would ensure that the student reviews the information in the warning before

making a financial commitment to the institution.

In the proposed regulations, we have added that we would conduct consumer testing to ensure that the content of the statement advances the goals of the warning, the language is understandable for the intended audience, the manner of delivery is effective, and the warning is, on the whole, useful for consumers—that is, it clearly communicates to students the risks associated with enrolling or continuing enrollment in a program that could soon become ineligible. The proposed regulations would allow the Secretary to improve the warning language by publishing a notice in the **Federal Register** with any changes to the text, after providing the general public and Federal agencies with an opportunity to comment in connection with the approval process under the PRA.

With regard to the concern expressed by some negotiators that students may not realistically have the option to transfer to a similar GE program at another institution, the proposed regulations would not mandate that institutions take affirmative steps to secure transfers for its students but, rather, would require that institutions tell students whether or not transfer options are available at the same institution or another institution. In response to the concerns of the negotiator who noted that in some cases the warning would discourage students in short-term programs from completing their programs, we believe that the potential timing for the loss of eligibility would still be important information for those students to be aware of. Further, we note that some programs may be short enough, or an enrolled student may have already completed enough of the program, that the potential loss of the program's title IV, HEA program eligibility in the following year would not be a concern.

In addition, we understand institutional concerns about providing the warning to prospective students who are categorically ineligible for title IV, HEA program funds. Institutions would be responsible for ensuring that any prospective student who could get title IV, HEA program funds receives the warning, but institutions would not be required to provide the warning to specific groups of prospective students whom they know would not be eligible for title IV, HEA program funds for enrolling in that program, such as foreign students.

Program Eligibility Restrictions

As stated, our proposed accountability framework is designed to provide an opportunity and strong incentive, particularly in the initial years of the proposed regulations, for institutions to improve poorly performing programs before loss of title IV, HEA program eligibility occurs. At the same time students, prospective students, and their families and the public, taxpayers, and the Government must be protected. There is no greater incentive to improve than the potential loss of eligibility. But, for programs that do not improve, the eventual loss of eligibility protects students by preventing them from enrolling in programs that have consistently produced poor student outcomes.

As in the 2011 Prior Rule, the proposed regulations would establish a period of time before an ineligible or voluntarily discontinued program could regain eligibility. However, unlike in the 2011 Prior Rule where the length of the waiting period varied depending on whether the program was made ineligible or if it was voluntarily discontinued, and when it was discontinued, the proposed regulations would use a single, three-year waiting period without regard to whether a program became ineligible or was voluntarily discontinued.

Although the negotiators generally did not raise concerns about the three-year waiting period, one of the negotiators believed that an institution that voluntarily discontinues a program should always have to abide by the three-year waiting period before seeking to reestablish the eligibility of the program, regardless of whether the program was failing, passing, or in the zone. We believe that it is more appropriate to impose this period of ineligibility only on programs determined to be failing or in the zone because there could be legitimate reasons for discontinuing a passing program, and, further, we do not wish to impose restrictions on an institution where a program is meeting the standards of the accountability metrics.

During the negotiated rulemaking sessions members of the negotiated rulemaking committee raised proposals to create borrower relief provisions for students in programs that fail the GE measures and to place additional restrictions on those program. The Department had proposed, for a program that does not pass the GE measures and is in jeopardy of losing its eligibility for title IV, HEA program funds, in addition to the student warning requirement, limits on the number of students eligible for title IV, HEA program funds who could be enrolled in the program. In response to the negotiators' concerns, the Department also proposed, in those circumstances, to require institutions to make arrangements to reduce student debt. We have not included these additional consequences in the proposed regulations.

We have not included enrollment limits in the proposed regulations as we believe that providing warnings to students and prospective students about potentially ineligible programs, along with the information that would be available through the required disclosures, provide meaningful protections and will sufficiently enable students and their families to make informed decisions about their educational investment. However, we invite comment on whether enrollment limits should be imposed on programs that could become ineligible and how those limits could be practically implemented.

We developed our debt reduction proposal in response to suggestions from negotiators representing consumer advocates and students. These negotiators argued that, while a failing or zone program would be allowed several years to pass the GE measures before becoming ineligible, students would continue to borrow to attend a program that the Department, based on the proposed regulations, may not reasonably expect would lead to gainful employment. Moreover, in the event a program lost eligibility under the GE measures, enrolled students would still be responsible for the debt they accumulated despite the fact they could not complete a program identified by the Department as failing the performance metrics.

To address this, the negotiators argued that the Department should provide loan discharges under section 437(c) of the HEA to students who borrowed for attending a program that loses eligibility under the GE measures. They contended that these borrowers would also have claims against the institution for enrolling them in a program that was offered as an eligible program, but that in fact did not meet the eligibility requirements proposed in the regulations. They observed that Federal regulations implementing section 455(h) of the HEA, 20 U.S.C. 1087e(h), allow a Direct Loan borrower to assert, as a defense to loan repayment, any claim that the borrower has against the institution, and that this existing regulation would apply to the case of a program that did not meet the standards of the proposed regulations. 34 CFR 685.206(c).[63] These negotiators

[63] In response to these objections, we noted that the Department had already expressly interpreted section 437(c) of the HEA in controlling regulations

further urged the Department to formally adopt, as a defense to loan repayment, a program's failure to pass the GE measures, whether or not the program eventually lost eligibility. Additionally, the negotiators suggested a variety of other remedies, including requiring institutions to refund tuition paid for a program that loses eligibility, requiring institutions to post a surety bond or letter of credit when a program receives a zone or failing result in order to provide for relief in the event that the program later becomes ineligible, and requiring all institutions intending to offer a GE program to contribute to a ''common pool'' fund to be administered by the Department that would be used to provide debt relief to students affected by a program's loss of eligibility.

One of the non-Federal negotiators submitted a proposal that would allow a program that did not pass the GE measures to remain eligible if the institution implemented a debt reduction plan that would reduce borrowing to levels that would meet the GE measures.

In response, at the second and third negotiating sessions, we drew on the negotiator proposals and presented regulatory provisions that would have required an institution with a program that could lose eligibility the following year to make sufficient funds available to enable the Department, if the program became ineligible, to reduce the debt burden of students who attended the program during that year. The amount of funds would have been approximately the amount needed to reduce the debt burden of students to the level necessary for the program to pass the GE measures. If the program were to lose eligibility, the Department would use the funds provided by the institution to pay down the loans of students who were enrolled at that time or who attended the program during the following year. We also included provisions that would allow an institution, during the transition period, to avoid these requirements by offering to every enrolled student for the duration of their program, and every student who subsequently enrolled while the program's eligibility remained in jeopardy, institutional grants in the amounts necessary to reduce loan debt to a level that would result in the program passing the GE measures. If an institution took advantage of this option, a program that would otherwise lose eligibility would avoid that consequence during the transition period.

Negotiators voiced numerous concerns about the proposed borrower relief provisions. These included whether the proposals would be sufficient to compensate students for enrolling in an ineligible program, what cohort of students would receive relief, the extent of the relief to be provided, how any monetary amounts would be calculated, and costs that would be incurred by institutions in providing relief. The nature of these discussions made clear that these are very complex issues that warrant further exploration. Accordingly, we are not including proposed language regarding borrower relief in the regulations and request comment on these issues, including other options that the Department could consider to address borrower relief concerns.

In addition to the specific concerns discussed about the proposed consequences, some of the negotiators raised general concerns about how these consequences would be implemented. In particular, some institutional representatives on the negotiating committee were concerned that having separate notices of determination for the D/E rates measure and for the pCDR measure, indicating different start dates for the various consequences, would be difficult for institutions to track and implement. In this regard, the Department has in place an annual process to determine CDRs for institutions, and the additional steps needed to determine a pCDR for a GE program would be built into that existing framework and timelines. We believe that this approach, as opposed to establishing an alternative process, would minimize the additional burden for institutions. There is no functional need to synchronize the calculation of the D/E rates and the pCDR as the information used for each measure is distinct and tied to different cohorts of students and different time periods.

Section 668.411 Reporting Requirements for GE Programs

Current Regulations: Under § 668.6(a) of the 2011 Prior Rule, an institution would be required to annually submit to the Department information about each student, regardless of whether the student received title IV, HEA program funds, who enrolled in a program that prepares students for gainful employment in a recognized occupation during an award year. Institutions would report, in addition to student identifiers (name, Social Security Number, and date of birth), the name, CIP code, and credential level of the program in which the student is enrolled, the date the student began enrollment in the program, the student's enrollment dates during the award year, and the student's attendance status at the end of the award year (i.e., completed, withdrew, or still enrolled). If the student completed the program during the award year, the institution would also report the date the student completed the program, amounts the student received from private educational loans and institutional financing, and whether the student matriculated to a higher credentialed program at the institution or any available evidence that the student transferred to a higher credentialed program at another institution.

Additionally, under the 2011 Prior Rule, for each gainful employment program, institutions would be required to report, by name and CIP code, the total number of students enrolled in the program at the end of each award year and identifying information for those students. In regard to the definition of CIP code, § 600.10(c)(2)(ii) of the 2011 Prior Rule refers, with respect to an additional education program, to programs with a CIP code under the taxonomy of instructional program classifications and descriptions developed by NCES. Section 668.7(a)(2) of the 2011 Prior Rule also specifies the credential levels for a program.

Finally, under the 2011 Prior Rule, an institution would be required to provide an explanation, acceptable to the Secretary, of why the institution failed to comply with any of the reporting requirements.

Proposed Regulations: Under proposed § 668.411, institutions would report, for each award year, information about each student who was enrolled in a GE program and received title IV, HEA program funds for enrolling in that program.

Specifically, under the proposed regulations, the required reporting would include:

- Information needed to confirm the identity of the student, such as the student's name, Social Security Number, and date of birth and the institution;
- The name, CIP code, credential level, and length of the GE program;
- Whether the GE program is a medical or dental program whose students are required to complete an internship or residency;
- The date the student first enrolled in the GE program;

to provide no relief for a claim that the loan was arranged for enrollment in an institution that was ineligible, or that the institution arranged the loan for enrollment in an ''ineligible program.'' 34 CFR 682.402(e); 59 FR 22470 (April 29, 1994), 59 FR 2490 (Jan. 14, 1994).

• The student's attendance dates and attendance status in the GE program during the award year; and

• The student's enrollment status (i.e., full-time, three-quarter time, half-time, less than half-time) as of the first day of the student's enrollment in the program.

Further, if the student completed or withdrew from the GE program during the award year, the institution would report:

• The date the student completed or withdrew from the program;

• The total amount the student received from private education loans for enrollment in the program that the institution is, or should reasonably be, aware of;

• The total amount of institutional debt incurred for enrollment in the program that the student owes any party after completing or withdrawing from the program;

• The total amount of tuition and fees assessed the student for the student's entire enrollment in the GE program; and

• The total amount of the allowances for books, supplies, and equipment included in the student's title IV Cost of Attendance, pursuant to section 472 of the HEA, for each award year in which the student was enrolled in the program, or a higher amount if assessed the student by the institution.

Finally, as in the 2011 Prior Rule, the proposed regulations would require an institution to provide to the Secretary an explanation, acceptable to the Secretary, of why the institution failed to comply with any of the reporting requirements.

No later than July 31 of the year the regulations take effect, institutions would be required to report this information for the second through seventh award years prior to that date. For medical and dental programs that require an internship or residency, institutions would need to include the eighth award year prior to July 31. For all subsequent award years, institutions would report not later than October 1 following the end of the award year, unless the Secretary establishes a later date in a notice published in the **Federal Register.** The proposed regulations would give the Secretary the authority to, through a notice published in the **Federal Register,** specify a reporting deadline later than October 1, as well as the authority to identify additional reporting items, after providing the general public and Federal agencies with an opportunity to comment in connection with the approval process under the PRA.

For example, if these regulations become effective on July 1, 2015, institutions must report information for the 2008–2009 through the 2013–2014 award years no later than July 31, 2015. For medical and dental programs, the institution must also include information from the 2007–2008 award year.

Under this example, unless the Secretary establishes a later date by notice in the **Federal Register,** institutions must report information for the 2014–2015 award year by October 1, 2015, and continue to report each subsequent award year by October 1 following the end of the award year on June 30.

We note that the terms ''CIP code'' and ''credential level,'' which are defined in proposed § 668.402, are first substantively used in proposed § 668.411 and are therefore explained here. The proposed regulations contain similar definitions as the 2011 Prior Rule; however, we have included separate definitions of both of these terms in § 668.402. In our proposed definition of CIP code, we refer, as we did in the 2011 Prior Rule, to a taxonomy of instructional program classifications and descriptions as developed by NCES. In the definition of ''credential level,'' we are identifying more specific credential levels than we did in the 2011 Prior Rule and have broken some of those levels into sub-categories. Thus, the undergraduate credential levels would be: less than one year undergraduate certificate or diploma, one year or longer but less than two years undergraduate certificate or diploma, two years or longer undergraduate certificate or diploma, associate degree, and bachelor's degree; and the graduate credential levels would be post-baccalaureate certificate (including postgraduate certificates), graduate certificate, master's degree, doctoral degree, and first-professional degree (e.g., MD, DDS, JD).

Reasons: Certain student-specific information is necessary for the Department to implement the provisions of proposed subpart Q, specifically to calculate the D/E rates and the pCDR for GE programs under the accountability framework. This information is also needed to calculate the completion rates, withdrawal rates, repayment rates, median loan debt, and median earnings disclosures under proposed § 668.412. As discussed in ''§ 668.401 Scope and purpose,'' the proposed reporting requirements are designed, in part, to facilitate the accountability of institutions for, and the transparency of, GE program student outcomes by: ensuring that students, prospective students, and their families, the public, taxpayers, and the Government, and institutions have timely and relevant information about GE programs to inform student and prospective student decision-making; help the public, taxpayers, and the Government to monitor the results of the Federal investment in these programs; and allow institutions to see which programs produce exceptional results for students so that those programs may be emulated.

Unlike in the 2011 Prior Rule, under the proposed regulations, institutions would not report information on students who did not receive title IV, HEA program funds for enrollment in the GE program. To align the proposed regulations with the court's interpretation of relevant law in *APSCU* v. *Duncan* and better monitor the Federal investment in GE programs, we have defined ''student'' for the purpose of subpart Q to be an individual who receives title IV, HEA program funds for enrollment in the applicable program. See ''§ 668.401 Scope and purpose'' for a complete discussion of the definition of ''student.'' The proposed regulations also differ from the 2011 Prior Rule in that the proposed regulations add the reporting of information necessary to implement provisions of proposed subpart Q that were not in the 2011 Prior Rule and, conversely, do not include requirements that were relevant to provisions in the 2011 Prior Rule that are not in the proposed regulations.

To enable the Secretary to calculate a program's GE measures and the relevant disclosures, an institution would be required to provide information to identify itself, the student, and the GE program in which the student was enrolled during the award year.

The proposed regulations would require institutions to report the length of the program. Under § 668.6 in the 2011 Current Rule, an institution is required to make several disclosures that are tied closely to the definition of ''normal time,'' namely, the tuition and fees it charges a student for completing the program within normal time, as well as the percentage of students who completed the program within normal time (the on-time graduation rate). ''Normal time'' is defined in § 668.41(a) as ''the amount of time necessary for a student to complete all requirements for a degree or certificate, according to the institution's catalog.''

In the proposed regulations, particularly in the reporting and disclosure requirements in §§ 668.411 and 668.412, we refer to the ''length of the program'' instead of to the ''normal time'' of the program. The ''length of the program'' would be defined as the amount of time in weeks, months, or

years that is specified in the institution's catalog, marketing materials, or other official publications for a student to complete the requirements needed to obtain the degree or credential offered by the program. The institution would report this information under § 668.411 and disclose the information under § 668.412(a)(3).

Although the substance of the definitions of ''normal time'' and ''length of the program'' is similar, we believe that the change in terminology is necessary to promote uniformity in the reporting requirements between the proposed regulations and the Moving Ahead for Progress in the 21st Century Act (MAP–21) that amended the HEA. MAP–21 limits a borrower's receipt of Direct Subsidized Loans to ''a period equal to 150 percent of the published length of the educational program in which the student is enrolled.'' Accordingly, the Department must collect the published length of the program to determine the borrower's maximum eligibility for such loans. Consistent with guidance issued by the Department for § 668.6(b) and in the preamble to the Interim Final Regulations establishing 34 CFR 685.200(f), published May 16, 2013, in the **Federal Register** (78 FR 28953), the length of the program that an institution must report is the amount of time that it takes full-time students to complete the program. This must be reported and disclosed in terms of calendar time—weeks, months, or years. We also believe that requiring this disclosure along with credential level disclosures would provide greater transparency about whether the length of the program is appropriate in light of the credential to be attained. Although the Department makes this type of assessment under § 668.14(a)(26), we request comment on other ways the Department could ensure that program lengths identified by institutions in their program participation agreements are appropriate given the credential level for the program.

In § 668.402 of the proposed regulations, we would establish separate definitions for ''CIP code'' and ''credential level.'' The proposed definition of ''CIP code'' largely mirrors the definition in the 2011 Prior Rule but would add specificity about the elements that make up a CIP code. We think this specificity would be helpful to institutions in identifying programs for the purpose of the reporting requirements.

In the proposed definition of ''credential level,'' we would also identify more specific credential levels than we did in the 2011 Prior Rule. The proposed definition includes a listing of the credential levels for use in the definition of a GE program. Specifically, we propose three different credential levels for undergraduate certificate programs, whereas the 2011 Prior Rule had only one. This breakdown of undergraduate certificate programs is necessary to properly identify the program for the purpose of both calculations of a program's D/E rates and pCDR and disclosures. For example, a one-year or shorter GE program offered by an institution under a specific CIP code is significantly different, in terms of student debt, costs, completion, etc., than a two-year program offered by the institution under the same CIP code. In addition, the proposed regulations would add a credential level for graduate certificate programs because of the interest rate provision in proposed § 668.403(b)(2), which uses a different interest rate for graduate programs. Reporting whether the program is a medical or dental program that includes an internship or residency is necessary because the proposed regulations in § 668.404 would use a different two-year cohort period—the sixth and seventh award years prior to the award year—in calculating the D/E rates for those programs. See ''§ 668.404 Calculating D/E rates'' for a discussion of why these programs would be evaluated differently.

The dates of a student's attendance in the GE program and the student's attendance status (i.e., completed, withdrawn, or still enrolled) and enrollment status (i.e., full-time, three-quarter-time, half-time, and less than half-time) would be needed by the Department to attribute the correct amount of a student's title IV, HEA program loans that would be used in the calculation of a program's D/E rates. These items would also be needed to identify:

- The program's former students for inclusion on the list submitted to SSA to determine the program's mean and median annual earnings for the purpose of the D/E rates calculation; and
- The borrowers who would be considered in the calculation of the program's pCDR, completion rate, withdrawal rate, loan repayment rate, median loan debt, and median earnings.

We would require the amount of each student's private education loans and institutional debt, along with the student's title IV, HEA program loan debt, to determine the debt portion of the D/E rates. During the negotiations, several of the non-Federal negotiators recommended that, in addition to FFEL and Direct Loans, the D/E rates take into account Federal Perkins Loans that were received by students for enrollment in a GE program. At that time, the Department noted that institutions would have to report Federal Perkins Loan amounts, as NSLDS did not have the necessary detail to correctly attribute Perkins Loans to a GE program. However, we have now determined that the necessary information is available without requiring any additional Perkins Loan reporting by institutions.

We would also require institutions to report the cost of tuition and fees and the cost of books, supplies, and equipment to calculate the D/E rates because, as provided under proposed § 668.404, in determining a GE program's median loan amount, each student's loan debt would be capped at the total of those two amounts. See ''§ 668.404 Calculating D/E rates'' for a discussion of why this cap is included in the calculation.

One non-Federal negotiator asked why institutions would not be required to report the SOC codes for the occupations that a program prepares students to enter. We responded that the institutional reporting under this section of the proposed regulations is at the student level and not on a program level. We also note that under the proposed disclosure requirements in § 668.412, institutions would disclose the occupations that the program prepares students to enter and this disclosure would include SOC codes.

Several of the negotiators, particularly those representing postsecondary institutions, asserted that the proposed reporting would be overly burdensome. We understand this concern and will continue to consider ways to reduce reporting burden. To that end we invite comment on how that may be accomplished. Nonetheless, we believe that the benefits to students and to taxpayers stemming from the reporting requirements under proposed subpart Q, which allow implementation of the proposed accountability and transparency frameworks, far outweigh any additional institutional burden. Further, we note that the information reported enables the Department to calculate each program's GE measures and disclosure items, which we believe is more efficient, much less burdensome, and results in greater accuracy than requiring institutions to perform these calculations, though we welcome comment on the advantages of having institutions perform these calculations.

We propose to retain the provision from the 2011 Prior Rule requiring an institution to provide the Secretary with an explanation of why it has failed to

comply with any of the reporting requirements. Because the Department would use the reported information to calculate the GE measures and the institutional disclosures, it is essential for the Secretary to have information about why an institution may not be able to report the information.

One negotiator argued that the combination of the reporting requirements of the proposed GE regulations and the reporting requirements resulting from the regulations promulgated on May 16, 2013, to implement the 150% Direct Subsidized Loan limit under section 455(q) of the HEA would result in the creation of a student unit records system in a form that is prohibited by section 134 of the HEA. That is not the case. Section 134(b) of the HEA allows the continued operation of a database necessary to implement title IV, HEA programs if that database was in operation prior to the enactment of section 134(b) of the HEA on August 14, 2008. 20 U.S.C. 1015c(b). Although NSLDS is a student unit database, it is one that is explicitly permitted under section 134(b) because it has been in operation prior to August 14, 2008, and it is necessary for the Secretary to properly administer the title IV, HEA programs.

Section 668.412 Disclosure Requirements for GE Programs

Disclosures

Current Regulations: Section 668.6(b) of the 2011 Current Rule requires an institution, for each program that prepares students for gainful employment in a recognized occupation, to disclose information about:

(1) the occupations that the program prepares students to enter, along with links to occupational profiles on O*NET;

(2) the on-time graduation rate for students completing the program;

(3) the cost of tuition and fees, books and supplies, and room and board, and a link to other cost information;

(4) the placement rate for students completing the program, as determined under a methodology to be developed by NCES when it becomes available, and, in the meantime, if required by the institution's accreditor or State, a program-level placement rate using the methodology required by the accreditor or State; and

(5) the median loan debt incurred by students who completed the program, identified separately as title IV, HEA loan debt and debt from private educational loans and institutional financing plans.

Proposed Regulations: Although the proposed regulations would replace § 668.6(b) of the 2011 Current Rule, they would retain many of the same concepts. The proposed changes would expand the amount of information that the Department may require to be disclosed and increase the Department's flexibility to tailor the disclosures in a way that would be most useful to students and minimize burden to institutions.

Under the proposed regulations, the disclosure items would include, but would not be limited to:

(1) the primary occupations (by name and SOC code) that the GE program prepares students to enter, along with links to the corresponding occupational profiles on O*Net;

(2) the GE program's completion and withdrawal rates for full-time and less-than-full-time students;

(3) the length of the program in calendar time (i.e., weeks, months, years);

(4) the number of clock or credit hours, as applicable, in the program;

(5) the total number of individuals enrolled in the program during the most recently completed award year;

(6) the loan repayment rate for any one or all of the following groups of students who entered repayment on title IV loans during the two-year cohort period: all students who enrolled in the program, students who completed the program, or students who withdrew from the program;

(7) the total cost of tuition and fees, and the total cost of books, supplies, and equipment that students would incur for completing the program within the length of the program;

(8) the placement rate for the program, if the institution is required to calculate a placement rate by its accrediting agency or State;

(9) of the individuals enrolled in the program during the most recently completed award year, the percentage who incurred debt for enrollment in the program;

(10) as provided by the Secretary, the median loan debt incurred by any or all of the following groups: students who completed the program during the most recently completed award year, students who withdrew from the program during the most recently completed award year, or both those groups of students;

(11) as provided by the Secretary, the median earnings of any one or all of the following groups: students who completed the program during the applicable cohort period used to calculate the most recent D/E rates for the program, students who were in withdrawn status at the end of the applicable cohort period used to calculate the most recent D/E rates for the program, or both students who completed the program during the applicable cohort period used to calculate the most recent D/E rates and students who were in withdrawn status at the end of that applicable cohort period;

(12) the most recent pCDR as calculated by the Secretary under proposed § 668.407;

(13) the most recent annual earnings rate as calculated by the Secretary under proposed § 668.404;

(14) if applicable, whether completion of the program satisfies the educational prerequisites for professional licensure in the State in which the institution is located and in any other State included in the institution's Metropolitan Statistical Area (according to OMB guidelines);

(15) if applicable, the programmatic accreditation required for an individual to obtain employment in the occupation for which the program prepares a student; and

(16) a link to the College Navigator Web site.

From year to year, in a notice published in the **Federal Register**, the Department would identify which of the disclosure items institutions must include on their disclosure templates; where applicable, whether the disclosures should be disaggregated to reflect students who completed the program, students who did not complete the program, or both students who completed and those who did not complete the program; and any other information that must be disclosed. If the Secretary were to require disclosure of completion rates, withdrawal rates, loan repayment rates, median loan debt, or median earnings, the Secretary would calculate the required information for each GE program based on information reported by the institution to the Secretary under proposed § 668.411 and provide the required disclosure to the institution to disclose.

The principal differences from the 2011 Prior Rule are that: the proposed disclosures for all items, except for the number and percentages of the number of individuals who incurred debt for enrollment in the GE program and completed or withdrew from the program, would be made only for students who received title IV, HEA program funds; the proposed disclosures could be required for all students enrolled in a program or disaggregated by whether or not they completed the program so as to provide

students with the information necessary to make more informed choices; and the Department would have more flexibility to change the required disclosures from year to year to reflect new evidence about what information is most helpful to students.

Reasons: As discussed in ''§ 668.401 Scope and purpose,'' the proposed disclosures are designed to improve the transparency of GE program student outcomes by: ensuring that students, prospective students, and their families, the public, taxpayers, and the Government, and institutions have timely and relevant information about GE programs to inform student and prospective student decision-making; help the public, taxpayers, and the Government to monitor the results of the Federal investment in these programs; and allow institutions to see which programs produce exceptional results for students so that those programs may be emulated.

In particular, the proposed disclosures would provide prospective and enrolled students the information they need to make informed decisions about their educational investment, including where to spend their limited title IV, HEA program funds and use their limited title IV, HEA program eligibility. Prospective students trying to make decisions about whether to enroll in a GE program would find it useful to have easy access to information about the jobs that the program is designed to prepare them to enter, the likelihood that they will complete the program, the financial and time commitment they will have to make, their likely debt burden and ability to repay their loans, their likely earnings, and whether completing the program will provide them the requisite coursework, experience, and accreditation to obtain employment in the jobs associated with the program.

The proposed disclosures would also provide valuable information to enrolled students considering their ongoing educational investment and post-completion prospects. For example, we believe that disclosure of completion rates for full-time and less-than-full-time students would inform prospective and enrolled students as to how long it may take them to earn the credential offered by the GE program. Similarly, we believe that requiring institutions to disclose pCDRs, annual earnings rates, and loan repayment rates would help prospective and enrolled students to better understand how well students who have attended the program before them have been able to manage their loan debt, which could influence their decisions about how much money they should borrow to enroll in the program. For a discussion about the pCDR and annual earnings rates and why we believe they are valuable measures of student outcomes, please see the discussion under ''§ 668.403 Gainful employment framework.'' We address the loan repayment rate briefly in this section and more extensively under ''§ 668.413 Calculating, issuing, and challenging completion rates, withdrawal rates, repayment rates, median loan debt, and median earnings.''

Additionally, to the extent that an institution does not systematically gather or calculate some of this information, particularly with respect to the completion, withdrawal, and repayment rates, median loan debt, and median earnings, the Secretary's calculation of this information for institutions could aid them in targeting their efforts and resources toward ongoing improvement in those areas where their programs are not performing well.

Disclosure Items, Generally

Disclosures Regarding Students Receiving Title IV, HEA Program Funds

Unlike in the 2011 Prior Rule, to align the proposed regulations with the court's interpretation of relevant law in *APSCU* v. *Duncan* and better monitor the Federal investment, the proposed disclosures would be made only with regard to students who received title IV, HEA program funds for enrollment in the GE program, with the exception of the disclosure of the number and percentage of individuals who incurred debt for enrollment in the GE program. See ''§ 668.401 Scope and purpose'' for a complete discussion of our proposed definition of ''student.''

Many of the non-Federal negotiators strongly disagreed with this approach, raising numerous concerns. First, several negotiators argued that excluding students who do not receive title IV, HEA program funds greatly reduces the usefulness of the information. In particular, they noted that the disclosures would not reflect the outcomes of all of the students enrolled in the program. They believed that providing data on all students enrolled in the program would provide a more complete picture of the program that would be meaningful to a broader spectrum of students, regardless of whether those students rely on Federal student assistance to enroll in the program.

Second, the negotiators raised concerns that some programs would have too few students who received title IV, HEA program funds to disclose the required information without jeopardizing student privacy. For instance, in cases where only a small number of students who received title IV, HEA program funds completed the program in a prior award year, the Department might not require the program's completion rate to be disclosed to protect the privacy of those students. The negotiators believed that limiting the disclosures to only those students receiving title IV, HEA program funds would increase the likelihood that information would be withheld in the disclosures, particularly given the proposed definition of credential level, which breaks out credential level to a greater degree than does the 2011 Current Rule.

To address this issue, several negotiators proposed different approaches. Some of the negotiators urged the Department to broaden the definition of ''student'' for purposes of the reporting and disclosure requirements to include all students enrolled in a GE program during an award year. These negotiators believed that the Department could collect data on all students enrolled in a GE program to prepare the aggregate information institutions would disclose in the template without storing any information in the student database about the individual students in the program who did not receive title IV, HEA program funds.

Several negotiators proposed that, as an alternative, institutions, rather than the Secretary, calculate and disclose the completion and withdrawal rates for all students enrolled in the program so that the Secretary would not have to collect information about students who do not receive title IV, HEA program funds. Other negotiators, however, argued strongly that the Department should calculate these rates in order to ensure the integrity of the data and to reduce burden on institutions.

One negotiator proposed broadening the scope of the disclosures and reporting to require that all students who have filed a FAFSA be included, regardless of whether those students subsequently received title IV, HEA program funds. The negotiator argued that this approach would permit the Department to retain that information in its student database so that the program's disclosures would more accurately portray the students in a GE program while arguably acting in alignment with *APSCU* v. *Duncan.* We discuss this proposal in ''§ 668.401 Scope and purpose.''

Although we understand the negotiators' concerns, we believe that,

for several reasons, the best approach is to include in the GE measures and all of the disclosures, except one, only students who received title IV, HEA program funds to enroll in the GE program.

First, this approach aligns with the court's interpretation of relevant law in *APSCU* v. *Duncan* because the Secretary would not add to the student database any information about the students enrolled in the GE program who did not receive title IV, HEA program funds.

Second, as the primary purpose of the proposed regulations is to evaluate whether a program should continue to be eligible for title IV, HEA program funds, we believe that, by limiting the GE measures and all but one of the disclosures to include only students who receive title IV, HEA program funds, the public, taxpayers, and the Government can effectively evaluate how the GE program is performing with respect to the students who received the Federal benefit. We also believe that disclosure of information that reflects solely the outcomes of students who received Federal dollars would be more relevant to similarly situated prospective students. Prospective students who intend to borrow for enrollment in a GE program would know specifically how students in similar economic circumstances fared in the program.

Third, the Secretary seeks to reduce the regulatory burden on institutions by performing the calculations of the completion, withdrawal, and repayment rates. In the interest of reducing institutions' regulatory burden, the Department also would calculate median loan debt using the data reported by the institutions. In addition to reducing institutional burden, this approach would ensure that students benefit from reliable data. Although we propose that the Department, rather than institutions, would calculate the rates required for disclosure, we invite specific comment on this question.

There is one set of disclosures that we believe institutions should calculate. Although the Department's calculations of median loan debt would be based only on the loan debt of students who completed the program, we are proposing that institutions be required to disclose the percentage of students who incurred loan debt to enroll in the program and who either completed the program during the most recently completed award year or withdrew from the program during the most recently completed award year. We believe this information would be particularly useful to students, prospective students, and their families, the public, taxpayers, and the Government, and institutions. Specifically, it would provide information about the number of students who are incurring loans, whether under the title IV, HEA programs or not, to enroll in a GE program and the extent to which those students complete or withdraw from the program.

We also note that, for small programs for which complete data are not available because of applicable privacy laws, institutions must still disclose several items, including the primary occupations the program prepares students to enter, the length of the program, the number of students enrolled in the most recently completed award year, the program costs, the link to the Department's College Navigator Web site, and licensure and programmatic accreditation information.

Program Comparability and Utility

Although several negotiators, in particular the representatives for consumers, students, and State Attorneys General, argued strongly for robust disclosures for GE programs, other negotiators argued that the proposed disclosures would not be meaningful to students because of a lack of comparability across institutions and because of the amount of information to be provided. Another negotiator contended that a proprietary institution offering a high-performing degree program would be required to make the disclosures, whereas a public institution offering a low-performing degree program in the same field would not fall under the proposed regulations and consequently would not be subject to the disclosure requirements. These negotiators, who primarily represented proprietary institutions, argued that these types of scenarios demonstrate that requiring disclosures only for GE programs instead of for all programs undermines the value of the information for consumers and unfairly burdens institutions offering GE programs.

Several negotiators also warned that requiring so many disclosures carries the risk of overwhelming consumers with information to the point that the disclosures cease to influence behavior. Some of these negotiators recommended limiting the information to be disclosed to program completion rates and the earnings and debt levels of students completing the program. They argued that providing fewer, but still valuable, data points would serve consumers effectively while reducing burden on institutions. Additionally, one negotiator noted that the current conversation in the higher education community surrounding accountability is in flux, arguing that the items that we believe will be useful to students today might not be the most useful tomorrow.

We share the concerns raised by the negotiators that the disclosure information must be as comparable and meaningful as possible. However, we are using this rulemaking process to propose regulations specifically for programs that are required under the HEA to prepare students for gainful employment in recognized occupations. Given this specific focus, the Department is not establishing new disclosure requirements for non-GE programs through the proposed regulations. However, we believe that the proposed disclosures would still be valuable because they would provide comparable information across GE programs.

To address the concern about overwhelming consumers with too much information, the proposed regulations would allow the Secretary to identify from a number of possible disclosures which items must be disclosed for a particular award year through a notice published in the **Federal Register**. This would allow the Department to conduct consumer testing to ensure that the disclosures advance the goals of the transparency framework, the language is understandable for the intended audience, the manner of delivery is effective, and the disclosures are, on the whole, useful for consumers and to modify the required disclosures based on the results of the consumer testing and experience. In addition, we invite comment as to which disclosures might be most useful to students, prospective students, and their families.

Individual Disclosure Items

In general, requiring institutions to disclose information regarding their GE programs is consistent with the provisions of section 487(a)(8) of the HEA, which requires institutions to provide prospective students with recent graduation, employment, and State licensing information related to the jobs for which the institution provides training. The negotiators raised a variety of concerns, however, about the adequacy of individual disclosure elements, while others had suggestions for additional required disclosures.

Placement Rate

Some negotiators, particularly those representing consumer advocates, State Attorneys General, and students, strongly urged the Department to develop a national placement rate methodology for the purpose of the placement rate disclosure. They believed that placement information is

critical to prospective students making a decision about where to enroll, and they argued that it is important to have a uniform methodology to allow for useful comparisons across programs. Further, these negotiators recommended standardizing the placement rate methodology to prevent an institution from manipulating or misrepresenting the program's placement rate, and they proposed parameters for how soon after graduation an individual must be employed, how long an individual must be employed in a job, and what types of jobs (i.e., in-field or out-of-field) an individual must hold, in each case for the job to be counted.

Some of the negotiators proposed an alternative approach, suggesting that the Department could develop a national placement rate methodology to function as the default methodology unless another entity, such as an accrediting agency or State, requires a more stringent methodology. They argued that this would be less burdensome for institutions that would have to calculate multiple rates, while still providing meaningful information. In particular, they noted that, because States and accrediting agencies vary widely in their methodologies, having a default methodology would protect consumers in situations where a non-Federal entity uses a weak placement rate methodology or does not require a placement rate.

Although we agree that comparable placement rate information would be valuable for prospective students, limitations in available data preclude the development of a national placement rate methodology that is consistent across all GE programs. The Department's NCES convened a technical review panel (TRP) in 2011 to develop a national placement rate methodology. The TRP determined that a single job placement rate methodology could not be developed without further study because of limitations in data systems and available data. The TRP suggested requiring greater transparency about how rates are currently calculated as an interim step for institutions disclosing these rates. See ''Report and Suggestions from IPEDS Technical Review Panel #34: Calculating Job Placement Rates'' at *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/ipeds-summary91013.pdf* for a full discussion of the TRP's findings.

Accordingly, we propose to require an institution to disclose placement rates for its GE programs, if it is required to do so by its State or accrediting agency, using the methodology required by the State or accrediting agency. This approach would provide consumers with valuable information because such requirements are in place for many programs using the methodologies that the respective agencies have determined are appropriate for those programs.

In accordance with the TRP's recommendations to foster as much transparency as possible regarding how placement rates have been calculated, the gainful employment disclosure template that institutions must currently use to make disclosures under § 668.6(b) of the 2011 Current Rule requires an institution to provide information about the methodology (or methodologies, if an institution must calculate a rate for more than one entity) that it used. Specifically, the template requires institutions to explain which students were included in the calculation, whether or not the jobs in which the students were placed were related to the student's field of study, the positions that students were hired for, how long after graduation students were hired and for how long they were employed before they would be included in the calculation, and how students were tracked.

We would continue to include in the proposed disclosure template a field in which institutions would disclose their placement rate methodology. We request comment, however, on the best way to handle cases where an institution must calculate more than one placement rate to satisfy the requirements of multiple entities, e.g., multiple States or multiple accreditors. The current template allows institutions to disclose placement rate information for up to one State and up to one accrediting agency, though the template also provides institutions with a way to disclose additional calculated rates. We invite comment on whether the Department should modify the template to allow institutions to include placement rate information required by additional entities.

Median Loan Debt

Several of the negotiators raised concerns about our proposal to require the disclosure of median loan debt. First, some of the negotiators believed that the Department should require institutions to disclose the mean, instead of the median, loan debt, arguing that consumers are more familiar with means than medians and that the mean would be more valuable. Another negotiator suggested that if the Department uses the higher of the mean or median loan debt in the D/E rates calculation, then institutions should have to disclose both the median and the mean.

Second, a number of the negotiators were concerned that the median loan debt information would be artificially high because it would only take into account students who received title IV, HEA program funds. In addition to these concerns, some of the negotiators requested clarification as to which students would be included in the various possible median loan debt calculations and what types of loan debt would be included.

We agree that it is important that consumers have clear, meaningful information about loan debt. However, we disagree that it would necessarily be more helpful to use the mean, as both mean and median are measures of central tendency. We also do not believe that it would be helpful to consumers to provide both the mean and the median. In designing the disclosure template, the Department would explain what a median is in plain language to help consumers understand the information, and we would use consumer testing to determine the most effective wording in this regard.

With respect to concerns that considering only the loan debt of students receiving title IV, HEA program funds would provide insufficient information to consumers about the amount of loan debt students in a GE program incur, particularly at low-cost institutions with few borrowers, we believe that these concerns may be overstated and are outweighed by the benefits of reducing institutional burden and ensuring that accurate loan information is disclosed. First, our analysis indicates that, of students who borrow for enrollment in GE programs, most receive title IV, HEA loans.[64] Many of these students may also be receiving private and institutional loans in addition to their title IV, HEA loans, but we believe that the percentage of students who borrow exclusively from private or institutional lenders is relatively small. Second, calculating the loan debt as a median would likely mitigate any distortion in the disclosure that could result from not including private or institutional borrowers who do not receive title IV, HEA program funds.

Unlike the median loan debt calculation for the D/E rates, the median loan debt determination for the disclosures would not include students who had no debt or who received only title IV, HEA program grants but no loans. We believe that this approach would result in a more useful disclosure for consumers. For students who must

[64] U.S. Department of Education, 2012 National Post-Secondary Student Aid Study (NPSAS: 12).

borrow to attend a program, it would be more informative to know how much debt other students who borrowed had to take on. Including students who do not have debt would distort the disclosure. In comparison, because the D/E rates are a measure of the overall performance of a program and not of particular individuals, it is appropriate to take into account the debt of all students, even those with zero debt.

The median loan debt calculation for disclosure purposes could include the median loan debt of students who completed the program in the most recently completed award year, withdrew from the program during the most recently completed award year, or both. We note that these are different cohorts of students than the cohorts of students used in the calculation of the D/E rates. The D/E rates consider the median loan debt only of students who completed the program during the two- or four-year cohort period. For the proposed disclosure item, the median loan debt would be for only those students who completed or withdrew from the program during the most recently completed award year. Using the most recently completed award year would ensure that students are receiving the most current information possible, as opposed to information that is several years old.

The 2011 Current Rule considers only the loan debt incurred by students who completed the program. We continue to believe that this is valuable information. However, we also believe that it is significant for prospective students to know how much loan debt was incurred by students who did not complete the program because those former students are still responsible for repaying their loans even if they do not earn a credential, so we have proposed that as a possible disclosure item.

Again, the Secretary would publish a notice in the **Federal Register** specifying for which of these groups of students the median loan debt must be disclosed. The proposed regulations would provide the Secretary flexibility to determine, based on consumer testing and experience, the information that would be most valuable to prospective students.

State Licensure

Several negotiators, particularly those representing consumer advocates, State Attorneys General, and student representatives, argued that it is critical for prospective students to know the extent to which a program qualifies students who completed the GE program for State licensure in a given field. The negotiators and commenters during the public hearings in spring 2013 provided examples of cases where students were misled to believe that if they completed a particular GE program, they would be eligible to sit for State licensing exams or otherwise would have met the educational prerequisites to obtain a license in a particular State, when, in fact, they were not able to sit for the exam or otherwise obtain a license. Along these lines, negotiators and others have noted cases where students were misled to believe that they would be able to obtain a position in their field of study upon completion but later learned that the program didn't have the proper programmatic accreditation to allow them to sit for a licensing exam needed to practice in the field or to obtain a certification generally preferred by employers. For example, in the physical therapy field, students typically must graduate from a program accredited by the Commission on Accreditation in Physical Therapy Education in order to sit for a licensing exam (see *www.capteonline.org* for more information). As another example, although licensure requirements for dental assistants vary by State, most States require attendance at a program accredited by the Commission on Dental Accreditation in order to be eligible for licensure (see *www.danb.org* for more information).

Although other negotiators generally supported the proposal to require disclosure of this information, several, particularly those from institutions with locations in multiple States and those in areas where students often cross State lines to attend school and for employment, were concerned about the burden associated with providing these disclosures for every State. Further, some of the negotiators questioned the feasibility and enforceability of requiring institutions to determine which programmatic accreditation is generally necessary to obtain employment in a particular field and to then disclose that information to prospective students. Other negotiators pointed out that students can also substitute work experience for the program accreditation requirement, and this makes it harder to determine when program accreditation would be considered a requirement for a GE program.

We agree that information about licensure and programmatic accreditation is critical information for prospective students. Students dedicate months and years, as well as a significant amount of money—often using up their eligibility for Federal Pell and Federal Direct subsidized loans—to enroll in GE programs. Enrolling in a program that does not have the necessary accreditation or meet licensure requirements can have grave consequences for students' ability to find jobs and repay their loans after graduation. Accordingly, we have proposed that institutions must disclose whether completion of the program satisfies the educational prerequisites for professional licensure in the State in which the institution is located. Institutions with locations in multiple States must make this disclosure for every State in which they are located. To address concerns about situations where students regularly cross State lines for employment outside of the State in which the institution is located, we have proposed that institutions must disclose whether the program meets the licensure requirements for each of the States in the institution's Metropolitan Statistical Area (MSA), as published by OMB. We believe that this is a reasonable approach, as ''the general concept behind an MSA is that of a core area containing a substantial population nucleus, together with adjacent communities having a high degree of economic and social integration with that core.'' [65] This concept seems appropriate for this context because it focuses on economic and employment mobility. More information about MSAs is available at *www.census.gov/population/metro/*. We specifically invite comment on whether a better measure can be used to identify when GE programs offered at institutions near State borders would be required to meet requirements established by adjacent States.

Additionally, we propose to require institutions to disclose the programmatic accreditation needed for an individual to obtain employment in the occupation identified by the institution. Similar to the licensure examples provided above, if a program does not have the proper accreditation, graduates of a program would be unable to seek employment in their occupations. It is therefore important that institutions perform due diligence to determine when programmatic accreditation would be needed and to inform prospective students of whether the program meets this requirement.

Completion, Withdrawal, and Repayment Rates, Median Loan Debt, and Median Earnings Calculations

Several negotiators raised questions and concerns about how the completion, withdrawal, and repayment rates, median loan debt, and median earnings would be calculated. Please see

[65] *www.census.gov/population/metro/about/*.

''§ 668.413 Calculating, issuing, and challenging completion rates, withdrawal rates, repayment rates, median loan debt, and median earnings'' for additional discussion of these items.

Other Possible Disclosures

A few negotiators suggested additional items that institutions should have to disclose to prospective students, such as the amount of money that the institution spent on marketing and recruitment for the program, the employment rate, and the percentage of students enrolled in an income-based repayment plan. We have not proposed to add these disclosures because, first, we believe the proposed disclosures better address whether a GE program, in fact, meets the gainful employment requirement. Second, we are mindful both that we do not want to overwhelm students with disclosures and that, under the proposed regulations, the Secretary has the flexibility to modify the disclosures if it is determined, for example, through consumer testing, that such disclosures would be valuable to prospective or current students within the context of the proposed regulations.

Timing, Format, and Method of Disclosure

Current Regulations: Section 668.6(b)(2) of the 2011 Current Rule requires institutions to include the disclosures for each GE program in promotional materials made available to prospective students and to post the disclosure information on their Web sites. Specifically, institutions must prominently provide the information in a simple and meaningful manner on the home page of each GE program Web site, and they must include a prominent and direct link to the disclosures from any Web site containing general, academic, or admissions information about the program.

Proposed Regulations: Under proposed § 668.412(a), institutions would use a template provided by the Secretary to disclose the items identified in a notice published in the **Federal Register**.

Under proposed § 668.412(b), institutions would be required to update at least annually the information contained in the disclosure template, and the deadline and procedures for doing so would be specified by the Secretary. Additionally, institutions would have 30 days from the date that they receive notice from the Secretary that they must provide the student warning for a GE program (see ''§ 668.410 Consequences of GE measures'') to update their disclosure templates to include the warning for both enrolled and prospective students.

Under proposed § 668.412(c), institutions would be required to provide a prominent, readily accessible, clear, conspicuous, and direct link to the disclosure template for each GE program on any Web page containing academic, cost, financial aid, or admissions information about that program. In this regard, the proposed regulations would provide the Secretary authority, beyond the remedies already available for noncompliance with title IV, HEA regulations, to require an institution to modify its Web page to ensure that the link to a GE program's disclosure template satisfies the requirement that the link be easy to find. Additionally, institutions would have the option to publish separate disclosure templates for each location or format of a GE program if doing so would result in clearer information for students. Institutions choosing to publish separate disclosure templates would have to ensure that each disclosure template clearly identifies the applicable location or format of the GE program to which the template refers.

Under proposed § 668.412(d), in addition to publishing their disclosures on their institutional Web sites, institutions would generally have to include the disclosure information in all promotional materials made available to prospective students identifying or promoting a GE program. The promotional materials must display the disclosure template in a prominent manner. Promotional materials would include materials such as, but not limited to, institutional catalogs, invitations, flyers, billboards, advertisements, and social media. The regulations would, however, allow institutions to include the Web address or direct link to the disclosure template where space or airtime constraints, such as with a 30-second radio advertisement, would preclude the full disclosure of the required information. Institutions that provide a Web address or URL in these cases would have to identify that URL or link as ''Important Information about the educational debt, earnings, and completion rates of students who attended this program'' or as specified by the Secretary in a notice published in the **Federal Register.** Institutions would be responsible for ensuring that all promotional materials, including printed materials, about a GE program are accurate and current at the time they are published, approved by a State agency, or broadcast.

Finally, proposed § 668.411(e) would require institutions to provide, as a separate document, a copy of the disclosure template to any prospective student. Specifically, before the prospective student signs an enrollment agreement, completes registration, or makes a financial commitment to the institution, the institution would be required to obtain written confirmation from the prospective student that the prospective student received a copy of the disclosure template. These disclosures need not be made to foreign students, however, as they are not eligible to receive title IV, HEA program funds.

Reasons: As with the 2011 Current Rule, the proposed regulations include requirements relating to the timing, format, and method of disclosure that are designed to increase the likelihood that prospective and enrolled students receive and review the disclosures. These requirements are intended to provide students with readily accessible, understandable, and timely information about GE programs to inform their educational and financial choices while at the same time minimizing burden on institutions.

Updating and Distributing Disclosures

Several of the negotiators raised concerns about the timing of the disclosures and about ensuring that the disclosures could be easily found on an institution's Web site and in its promotional materials. With respect to the timing of the disclosures, the negotiators representing consumer advocates, State Attorneys General, and students urged the Department to require institutions to update their disclosures annually with the most current information and to add the student warning, if required under proposed § 668.410, as soon as possible, so that students can take that information into account when deciding where to enroll or whether to continue enrollment in the program. These negotiators also warned of the high-pressure tactics that predatory institutions might use to coerce prospective students to enroll, arguing that students need to have this information before they actually enroll in a program.

Some of the negotiators also raised concerns that some schools would try to hide their disclosures by burying them in large amounts of material or otherwise trying to draw a student's attention away from them. To address this issue, the negotiators proposed requiring institutions to provide the disclosures both in writing and orally and prohibiting institutions from using language to undermine, denigrate, or otherwise diminish the content of the

disclosures. Other negotiators, particularly those representing institutions, challenged the feasibility of making oral disclosures to each student for every program of every program length. They argued that this would add significant burden for schools. In particular, they noted that this would be difficult for institutions that might not communicate in person with all of their students, such as those that offer distance education programs. In response, some of the negotiators asserted that the burden would be justified when students are taking on significant amounts of debt, and others suggested using video or other means such as entrance counseling to reach all students.

In the same vein, several of the negotiators urged the Department to ensure that Web links to the disclosures be prominent, clear, and conspicuous to ensure that prospective students would find and understand the information. They recommended that the link to the disclosure template be placed next to ''trigger terms'' like the program name and in a way that students would not have to scroll down a Web site to find it. Other negotiators, particularly those from institutions with multiple locations, raised concerns about being overly prescriptive about how and where an institution must include the links to the disclosures. These negotiators noted that institutions need flexibility to provide the information in the way that is best suited for their programs.

We share the negotiators' general concerns about ensuring that the required disclosures are provided to students in a timely and meaningful way, and we are proposing several provisions to address these concerns. First, we have proposed that institutions would have to update their disclosures annually in accordance with procedures and timelines established by the Secretary. Under the 2011 Current Rule, institutions updated their disclosures by January 31 in 2013 and 2014, and the Secretary provided institutions approximately two months to make those changes. We anticipate that under the proposed regulations, we would again require institutions to update their disclosures with information from the most recently completed award year annually in January. We note that because each award year ends on June 30, institutions would have several months to gather the necessary information to update their disclosures. We have also proposed that institutions would have to update their disclosure templates to include the student warning within 30 days of the date institutions receive final GE measures that trigger the requirement to provide the warning. We believe that this provides institutions sufficient time to update their disclosures while still ensuring that students have this critical information promptly.

Second, to address concerns about high-pressure enrollment tactics, we are proposing that an institution must make these disclosures to a prospective student before the student makes a financial commitment to the institution, for example, by signing an enrollment agreement or otherwise completing registration. Further, we are proposing that an institution would have to provide the disclosure template as a stand-alone document and would have to obtain written confirmation from the prospective student that the student received the disclosure template. In response to concerns raised by some negotiators, we note that institutions can accept electronic means of written confirmation, and we would provide additional guidance to institutions in this regard. We believe that these provisions would increase the likelihood that prospective students will have the time to read and digest the disclosures without facing undue pressure to enroll immediately.

Third, we have used terms like ''direct,'' ''prominent,'' and ''clear and conspicuous'' to highlight the fact that students should be able to reach the disclosures with a minimum number of clicks from the program home page and that the link should be placed on the Web site in a way that is obvious, eye-catching, and otherwise not difficult to find. The Federal Trade Commission (FTC) published guidance in 2013 on making disclosure information easy to find. In particular, the FTC recommends placing a hyperlink to a disclosure as close as possible to the relevant information it qualifies and to make it noticeable, to label the hyperlink appropriately to convey the importance, relevance, and nature of the information it leads to, and to repeat the hyperlink as needed on lengthy Web sites or when consumers have multiple routes through a Web site. (See the FTC's 2013 guidance at: *www.business.ftc.gov/sites/default/files/pdf/bus41-dot-com-disclosures-information-about-online-advertising.pdf.*) We would expect to provide similar guidance to facilitate compliance with these proposed requirements.

Finally, the proposed regulations provide institutions the flexibility to develop their disclosure templates, hyperlink pathways, and promotional materials in ways best suited for their programs. For example, we have proposed that institutions offering a GE program in more than one location or format would have the option to create separate disclosure templates for each location or format in order to provide clearer disclosures. We note, however, that institutions developing multiple templates for a GE program would have to ensure that these separate disclosure templates are clearly identified and labeled so that viewers would not be confused or misled by the information. Similarly, we have not specified a maximum number of ''clicks'' from the program home page or other Web pages related specifically to the program to the disclosure template in order to allow institutions to design reasonable hyperlink pathways.

For example, it would be acceptable for institutions with multiple locations of a program to include a pass-through page from the program's home page to the actual disclosure templates where a student would identify the specific campus for which the student would like the disclosure information. In order to promote compliance, however, we propose that the Department may require an institution to modify its Web page if the link for the disclosure template is not prominent, readily accessible, clear, conspicuous, and direct. This would allow the Department to work with schools to improve their disclosures without engaging in a lengthy and potentially adversarial program review.

Additionally, we have given institutions flexibility as far as how to incorporate the disclosures into their promotional materials. The proposed regulations require that institutions include the disclosure template or, where including the disclosure template is not feasible, a link to the template, in all promotional materials about the GE program made available to prospective students, including in materials like course catalogs, information session invitations, flyers, billboards, and advertisements. In including their disclosures, or a link to the disclosures, institutions would be required to identify the link as ''Important information about the educational debt, earnings, and completion rates of students who attended this program.''

We invite comment on the optimal format and placement of the disclosure template by the institution, recognizing the variations among institutions in Web site organization, the information conveyed, and how the enrollment process is conducted.

Section 668.413 Calculating, Issuing, and Challenging Completion Rates, Withdrawal Rates, Repayment Rates, Median Loan Debt, and Median Earnings

Current Regulations: Section 668.6(c) of the 2011 Current Rule provides that institutions must calculate the on-time graduation rate for students completing the program. Because the 2011 Current Rule specifies that the institution will calculate the on-time graduation rate, the rule did not provide a process by which an institution would issue or challenge the rate.

The 2011 Current Rule does not require institutions to disclose withdrawal rates, repayment rates, or median earnings; however, it does require institutions to calculate and disclose the GE program's median loan debt. Under the 2011 Prior Rule, a loan repayment rate was used not as a disclosure item but, together with debt-to-earnings ratios, to determine the eligibility of a GE program for title IV, HEA program funds. See ''§ 668.403 Gainful employment framework'' for a discussion of the loan repayment rate under the 2011 Prior Rule.

Calculating Completion, Withdrawal, and Repayment Rates, Median Loan Debt, and Median Earnings

Proposed Regulations: As discussed in connection with proposed §§ 668.411 and 668.412, under the proposed regulations, an institution could be required to disclose completion, withdrawal, and repayment rates, median loan debt, and median earnings for a GE program. Using the procedures proposed in § 668.413, and based on the information that institutions would report under proposed § 668.411, the Department would calculate the rates, median loan debt, and median earnings, and provide them to institutions for disclosure. The proposed regulations would provide an opportunity for institutions to challenge the Secretary's completion, withdrawal, and repayment rates and median loan debt and median earnings determinations, as discussed under ''Issuing and Challenging Completion, Withdrawal, and Repayment Rates, Median Loan Debt, and Median Earnings.''

Completion Rates

Under proposed § 668.413(b)(1), the Secretary would calculate four completion rates for a GE program—two based on students whose enrollment status is full-time on the first day of the student's enrollment in the program, and two more based on students whose enrollment status is less-than-full-time on the first day of the student's enrollment in the program.

For the two completion rates based on full-time students in the enrollment cohort, we would determine the percentage of students who completed the program within 100 percent of the length of the program and the percentage of students who completed the program within 150 percent of the length of the program. For the two completion rates based on less-than-full-time students in the enrollment cohort, we would determine the percentage of students who completed the program within 200 percent of the length of the program and within 300 percent of the length of the program.

Withdrawal Rates

Under proposed § 668.413(b)(2), the Secretary would calculate two withdrawal rates for the program. One rate would be the percentage of students in the enrollment cohort who withdrew from the program within 100 percent of the length of the program. The second rate would be the percentage of students in the enrollment cohort who withdrew from the program within 150 percent of the length of the program. The enrollment cohort would be comprised of the students receiving title IV, HEA program funds who enrolled in the program at any time during the relevant award year.

Repayment Rates

Under proposed § 668.413(b)(3), the Secretary would calculate a borrower-based loan repayment rate for borrowers with FFEL or Direct Loans for enrollment in a GE program by adding together the ''number of borrowers paid in full'' to the ''number of borrowers in active repayment'' and dividing the sum by the ''number of borrowers entering repayment.''

Number of borrowers entering repayment are those who entered repayment during the two-year cohort period on FFEL or Direct Loans received for enrollment in the GE program.

Number of borrowers paid in full would be, of the borrowers entering repayment, those who have fully repaid all of their FFEL or Direct Loans received for enrollment in the GE program. For instances where a loan was consolidated with one or more other loans, the consolidation would not result in the consolidated loans being viewed as paid in full. The repayment status of the consolidation loan would instead be used for the repayment rate calculation, as discussed more fully below.

Number of borrowers in active repayment would be those borrowers entering repayment who, based on a comparison of the outstanding balance of each loan at the beginning and end of the most recently completed award year, made loan payments sufficient to reduce by at least one dollar the outstanding balance of each of the borrower's FFEL loans or Direct Loans received for enrollment in the GE program (or consolidation loans that include FFEL or Direct Loans taken out for enrollment in the GE program).

In the calculation, a borrower who defaulted on a loan taken out for enrollment in the GE program would not be included in the number of borrowers in active repayment even if the loan has subsequently been paid in full or met the definition of active repayment. That borrower would, however, be included in the number of borrowers entering repayment.

The Secretary would exclude from the repayment rate calculation those borrowers who:

- Have one or more FFEL or Direct Loans in a military-related deferment status at any time during the most recently completed award year;
- Have one or more FFEL or Direct Loans under consideration, or approved, for a discharge on the basis of the borrower's total and permanent disability;
- Were enrolled in any other eligible program at the institution or at another institution during the most recently completed award year; or
- Have died.

The proposed regulations would also provide that the Secretary may modify the loan repayment rate formula to calculate a repayment rate for only those borrowers who completed the program or for only those borrowers who withdrew from the program.

Median Loan Debt

Under proposed § 668.413(b)(4), (b)(5,) and (b)(6), the Secretary would determine and provide to institutions the median loan debt of a GE program for students who completed the program, students who withdrew from the program, and for both students who completed and students who withdrew from the program during the most recently completed award year. In calculating the median loan debt, the Secretary would include only the GE program's former students who received title IV, HEA program funds for enrollment in the program. And, unlike the median loan debt used in the calculation of D/E rates, where students who do not have title IV loans would be included, the median loan debt used for disclosure would be based only on students who received title IV, HEA

program loans, but would include all debt, including private loans, incurred by those students related to enrollment in the program.

The median loan debt would be calculated using each student's incurred debt, as described in proposed § 668.404(d)(1), that is title IV loans, private educational loan debt, and debt from institutional financing.

Median Earnings

Under proposed § 668.413(b)(7)-(b)(12), the Secretary would determine and provide to institutions the median earnings of a GE program for students who completed the program, students who withdrew from the program, and for both students who completed and students who withdrew from the program during the applicable cohort period.

For students who completed a program, the Secretary would determine median earnings using generally the same process as the one used to calculate the D/E rates for a GE program in proposed § 668.405. Specifically, the Secretary would:

- Create a list from Department records of the students who completed the program during the applicable cohort period (§ 668.413(b)(8)(ii)(A)(*1*));
- Indicate which students would be removed from the list and the specific reason for their exclusion (§§ 668.413(b)(8)(ii)(A)(*2*); 668.413(b)(11));
- Provide the list of students to the institution and consider any changes to the list proposed by the institution (§§ 668.413(b)(8)(ii)(B); 668.413(b)(8)(iii));
- Obtain from SSA or another Federal agency the median annual earnings of the students on the list (§ 668.413(b)(8)(iv)); and
- Notify the institution of the median annual earnings of the students who completed the program (§ 668.413(c)(3)).

As with the process used to calculate D/E rates, in providing the list of students who completed the program, the Secretary would state which cohort period was used to select the students. Depending on the number of students who completed the program in the two-year cohort period the proposed regulations would use one of two different cohorts to determine a program's median earnings. Specifically, if 30 or more students completed the program in the two-year cohort period, the median earnings for the program would be calculated based on the earnings of those students. But if fewer than 30 students completed the program during the two-year cohort period, the median earnings for the program would be calculated based on the earnings of the students who completed the program in the four-year cohort period.

Under proposed § 668.413(b)(9), for students who withdrew from a GE program, the Secretary would follow a similar process. Under proposed § 668.413(b)(9), the Secretary would:

- Create a list from Department records of the students who were enrolled in the program but withdrew from the program during the applicable cohort period (§ 668.413(b)(9)(ii)(A)(*1*));
- Indicate which students would be removed from the list and the specific reason for their exclusion (§§ 668.413(b)(9)(ii)(A)(*2*); 668.413(b)(11));
- Provide the list of students to the institution and consider changes to the list proposed by the institution (§§ 668.413(b)(9)(ii)(B); 668.413(b)(9)(iii));
- Obtain from SSA or another Federal agency the median annual earnings of the students on the list (§ 668.413(b)(9)(iv)); and
- Notify the institution of the median annual earnings for the students who did not complete the program (§ 668.413(c)(3)).

The Secretary would use a similar process, as outlined previously for calculating the median earnings of students who completed the program, to determine the applicable cohort period for the purpose of creating the list of students who withdrew from the program and determining their median earnings.

To determine the median earnings of the combined group of students who completed the program and who withdrew from the program, the Secretary would follow the same process, but would create a combined list of students who completed the program and students who withdrew from the program and use that list as the basis for the calculation (§ 668.413(b)(10)).

Reasons: The proposed regulations describe how the Secretary would calculate a program's completion, withdrawal, and repayment rates, median loan debt, and median earnings and provide the results to the institutions. In the interest of fairness and due process, institutions would have an opportunity to correct the information the Secretary uses to calculate the completion, withdrawal, and repayment rates, median loan debt, and median earnings. The corrections procedures in proposed § 668.413 mirror the related procedures in § 668.405 for calculation of the D/E rates. Please see ''§ 668.405 Issuing and challenging D/E rates'' for a more detailed description of those procedures and our reasons for proposing them.

Completion Rate

The 2011 Current Rule provides for an institution to calculate the on-time graduation rate for its GE programs. In contrast, we are proposing that the Secretary would calculate completion rates for an institution's GE programs that reflect the extent to which students completed the program within 100 percent and 150 percent of the length of the program.

The proposed regulations address concerns raised by commenters during the public hearings and by some of the non-Federal negotiators during the negotiated rulemaking about whether institutions or the Secretary would be in the better position to calculate completion rates.

A number of non-Federal negotiators recommended that we follow the approach in the 2011 Current Rule and provide that institutions, rather than the Secretary, should calculate the completion rate. They noted that, if the Secretary were to calculate the completion rate, (1) institutions would be required to report additional information under proposed § 668.411 and (2) the calculation would be limited to students receiving title IV, HEA program funds, in alignment with *APSCU* v. *Duncan.* See ''§ 668.401 Scope and purpose'' for a general discussion of our focus on students who receive title IV, HEA program funds and ''§ 668.412 Disclosure requirements for GE programs'' for a discussion of the various considerations regarding the group of students (i.e., students receiving title IV, HEA program funds or all students) on which disclosures are proposed to be based. Many of the non-Federal negotiators believed that there would be more value for prospective students if the completion rates included all students who enrolled in the program and not just those who received title IV, HEA program funds. In addition, the negotiators were concerned that if the Secretary were to calculate completion rates, in order to provide an appropriate due process, the Secretary would have to provide institutions with an opportunity to challenge the calculation, potentially delaying the inclusion of the rates on the disclosure template.

Other negotiators strongly favored having the Secretary calculate the completion rates to better ensure the integrity of the information and to lessen the burden on institutions. After consideration of the various negotiator suggestions, we believe that the benefits

of (1) ensuring that all completion rates are calculated consistently and accurately across institutions and across programs; (2) reducing the burden on institutions to calculate multiple rates; and (3) providing the Department the opportunity to gather and analyze completion information for all GE programs outweigh any drawbacks associated with limiting the coverage of these disclosures to students who received title IV, HEA program funds. Nonetheless, we invite comment on the question of whether the Secretary or institutions should calculate completion rates for the respective groups of students.

Committee members urged the Department to modify the completion rate calculation to show the percentage of all students who completed the program, rather than just the percentage of students who completed the program on time, as is set forth in the 2011 Current Rule. Negotiators argued that this change would provide for more meaningful information for prospective students. In addition, some of the negotiators raised concerns that a single completion rate indicating the extent to which full-time students completed a program on time would not adequately reflect the experience of part-time students, many of whom withdraw and re-enroll multiple times before completing a program. In this regard, some of the negotiators noted that students often change their enrollment status during the term, and they discussed how to include in the completion rate students who began a program as full-time students but then switched to less-than-full-time status. To address this concern, the negotiators suggested fixing a student's enrollment status at a certain point, such as on the first day of class or on a census date. The negotiators also noted that, given the proposal to narrow the definition of ''student'' to include only students who received title IV, HEA program funds, a completion rate for only full-time students could dramatically reduce the completion rate for a particular GE program. Lastly, while several negotiators urged the Department to include additional completion rates for part-time students, others argued that having four rates would overwhelm students and prospective students and ultimately would not provide meaningful information.

To address these concerns, we are proposing that the Secretary would, using data reported by an institution, calculate and provide to the institution for disclosure up to four different completion rates for each of its GE programs when the Secretary identifies those completion rates as required disclosures for a particular award year. In calculating these rates, the Secretary would use a ''snapshot'' of a student's enrollment status (i.e., full-time, less-than-full-time) on the first day of the student's enrollment in the program. Although this would not reflect changes in a student's enrollment status during the student's entire enrollment, we believe, and some committee members agreed, that this is a reasonable way to establish cohorts for this purpose, as it generally reflects the intent of the student at the beginning of his or her enrollment in the program.

To ensure that enrolled and prospective students have information about the percentage of students who reach completion, rather than just the percentage of students completing the program on time as is the case with the 2011 Current Rule, and, additionally, how long students are taking to complete the program, the calculations for full-time students would be based on the number of full-time students who completed the program within 100 percent of the length of the program, and the number of full-time students who completed the program within 150 percent of the length of the program. Similarly, with respect to less-than-full-time students, the calculations would be based on the number of less-than-full-time students who completed the program within 200 percent of the length of the program, and the number of less-than-full-time students who completed the program within 300 percent of the length of the program.

We believe that calculating completion rates using these four variations would adequately capture the experience of full-time and part-time students, and that this information would be beneficial to both enrolled and prospective students, as well as to institutions as they work to improve outcomes for students. However, we are mindful of the concerns raised by some of the committee members that multiple completion rates might be confusing. We invite comment on how the completion rate calculations could be simplified but still provide meaningful information to prospective students.

Withdrawal Rate

The 2011 Current Rule does not require disclosure of a GE program's withdrawal rates. However, we believe this information can be very valuable to students, as discussed in ''§ 668.412 Disclosure requirements for GE programs.''

As with completion rates, committee members disagreed as to whether the withdrawal rate should be calculated by the institution or the Department and, related to that, whether the calculation should include only students who received title IV, HEA program funds or all individuals who enrolled in and withdrew from the program, whether or not they received title IV, HEA program funds. As with completion rates, we concluded that the benefits of ensuring consistent and accurate calculations, reducing burden on institutions, and providing an opportunity for the Department to obtain data outweigh concerns about limiting the disclosure to those students who received title IV, HEA program funds. As with completion rates, however, we seek specific comment on the question.

The negotiators had two other suggestions concerning the withdrawal rate. First, some recommended extending the period of time over which the rate is calculated to mirror the proposed extended completion rate periods. Second, some of the negotiators suggested replacing the withdrawal rate with an attrition rate to reflect the turnover of students who enroll in a program.

We propose that there be two withdrawal rate calculations. One would consider the percentage of students in the enrollment cohort who withdrew from the program at any time during the length of the program, beginning upon the student's original enrollment in the program, within 100 percent of the length of the program. The second rate would be the percentage of students in the enrollment cohort who withdrew from the program within 150 percent of the length of the program. We think this second variation of the rate would provide valuable information to students about when students withdraw from their programs. As with other items on the disclosure template, we would conduct consumer testing to assess how best to present these variations of withdrawal rate.

We agree that an attrition rate would provide useful information; however, we believe that prospective students would better understand a withdrawal rate. That is, it would be more intuitive for consumers looking at a GE program's disclosures to understand that the withdrawal rate reflects how many students began the program but dropped out before completing the program. Additionally, we think these rates would be useful to prospective students to assess whether an institution may have a ''churn'' problem, where many students are enrolling, but are dropping out. Making a ''churn'' problem more visible to prospective students may also encourage institutions to target efforts

and resources to improve student outcomes.

Finally, some negotiators requested clarification about how official and unofficial student withdrawals would factor into the withdrawal rate calculation. Operationally, the Secretary would include in the withdrawal rate calculation any student that the institution reported as withdrawn under proposed § 668.411. Institutions must report as withdrawn any student who officially withdrew or otherwise met the return of title IV, HEA program funds withdrawal provisions under § 668.22, which include unofficial withdrawals.

Repayment Rate

We propose to use as a disclosure item a ''borrower-based'' repayment rate for title IV, HEA program loans that reflects whether students entering repayment during the applicable cohort period were able to pay down, by at least one dollar, the outstanding balance on the Federal loans they took for enrolling in the GE program. Reducing the outstanding balance would demonstrate that the GE program's former students had sufficient resources to pay down at least the amount of accruing interest on their title IV, HEA program loans taken for enrollment in that program.

For reasons we have already discussed, we do not propose to use the loan repayment rate as an accountability metric in the proposed regulations as we did in the 2011 Prior Rule. Nor do we propose the same calculation of the repayment rate that was in the 2011 Prior Rule, which was calculated as a ''dollar-based'' rate. A dollar-based rate measures the percentage of loan amounts that are being repaid; a borrower-based rate measures the percentage of students who are making payments on their loans. Of the two, we believe a borrower-based repayment rate is easier to understand and consequently would be more useful to prospective students trying to gain insight into whether they would be able to repay loans they take out for enrolling in the program and where to invest their limited eligibility for title IV, HEA program funds. We believe the repayment rate disclosure would also help enrolled students as they make continuing financial decisions. In particular, it might encourage an enrolled student to reconsider the amount they plan to take out in loans in subsequent years. Additionally, we think this rate would be useful to institutions to assess whether students who are taking out Federal loans are having a difficult time repaying them and, if so, to target efforts and resources to provide more effective loan counseling to students.

Some of the negotiators recommended indicating on the disclosure template that the proposed loan repayment rate does not include any private education loans or institutional debt that a borrower may have incurred in addition to their Federal loans. Under the proposed regulations, the loan repayment rate would include FFEL and Direct Loans (including Graduate PLUS loans, and consolidation loans that include a FFEL or Direct Loan received for enrollment in the GE program). The loan repayment rate would not include Parent PLUS Loans, Perkins Loans, private education loans, or institutional debt. Although we believe that the calculation would be an accurate reflection of the repayment performance of a GE program's former students, we will use focus groups and consumer testing to determine the best way to explain to users of the disclosure template which types of loans are included in the repayment rate and which are not.

Other negotiators representing institutions argued that some borrowers in an income-driven repayment plan (i.e., Income Based Repayment, Income Contingent Repayment, Pay As You Earn) who make their scheduled payments are actively repaying their loans, even if those payments do not reduce the principal year-end balance, and should be counted in the numerator of the repayment rate as being in active repayment. Although the Department has made income-driven repayment plans available to borrowers to assist them in managing their debt, and borrowers may well be meeting their obligations under their repayment plans, these plans by their nature are available only to borrowers whose loan debt in relation to their income places them in a ''partial financial hardship''—information that we believe the rate should reflect. Specifically, the income-driven repayment plans result in considerably extended repayment, add interest cost to the borrower, and allow cancellation of amounts not paid at potential cost to taxpayers, the Government, and the borrower. Treating such borrowers as in active repayment for the purpose of the repayment rate disclosed to consumers would not provide meaningful information about a GE program's student outcomes and, worse, may give prospective students unrealistic expectations about the likely outcomes of their investment in such a program. For that reason, we believe that students who are unable to make sufficient loan payments scheduled during a year to reduce the outstanding principal loan balance owed on their loans (principal and accrued interest) at the end of the year by at least one dollar, including students making payments under an income-driven repayment plan, should not be included in the number of borrowers in active repayment.

Several commenters recommended that the borrowers excluded under the proposed D/E rates calculations—such as students in military deferment status or students who are enrolled in another eligible educational program—be excluded from the loan repayment rate calculation, noting that the same logic would apply. We agree and propose that the same exclusions would apply except for the exclusion in proposed § 668.404(e) for students who completed a higher credentialed program because that exclusion is not relevant to repayment rates. See ''§ 668.404 Calculating D/E rates'' for a discussion of these exclusions.

Median Loan Debt

Under the 2011 Current Rule, institutions calculate and disclose the median loan debt incurred by students who completed the program, identified separately as title IV, HEA loan debt and debt from private educational loans and institutional financing plans. We believe the better approach, instead of each institution calculating three median loan debt amounts for each of its GE programs, is for the Secretary to calculate the median loan debt amounts and provide them to the institution for disclosure.

In addition to reducing burden on institutions and ensuring accuracy of the results, this approach is consistent with our broader approach of basing disclosure information on students who received title IV, HEA program funds, rather than all individuals enrolled in the GE program.

Although we understand the negotiators' concerns, we believe that disclosure information that reflects solely the outcomes of students who received Federal dollars would be more relevant to similarly situated prospective students who likely will also receive title IV, HEA program funds. Prospective students who will need to borrow from the title IV, HEA programs for enrollment in a GE program would know specifically how students in similar economic circumstances have fared in that program. See ''§ 668.401 Scope and purpose'' and ''§ 668.412 Disclosure requirements for GE programs'' for a complete discussion of our reasons for proposing that the GE measures calculations and disclosures be based on

information on only title IV, HEA program funds recipients. We also note, as described in ''§ 668.412 Disclosure requirements for GE programs,'' that we may require institutions to disclose information about the individuals enrolled in the program during the most recently completed award year, specifically, the percentage of those students who incurred debt for enrollment in the program.

Median Earnings

The 2011 Current Rule does not provide for the calculation of median earnings as a disclosure item. However, we believe that a median earnings disclosure would allow students to better understand their likely financial outcomes if they enroll in a GE program and either complete the program or withdraw from the program. For the purpose of this disclosure, median earnings for students who completed the program would already be obtained from SSA for the purpose of calculating the D/E rates. Please see ''§ 668.405 Issuing and challenging D/E rates'' for a discussion of the process that the Secretary would use to determine the median earnings of students who complete a GE program. A similar process would be used for students who withdrew from the program, and for both students who completed and students who withdrew from the program. We have repeated the process in proposed § 668.413 to make it easier for readers to understand the section without having to refer back to previous sections in proposed subpart Q.

Issuing and Challenging Completion, Withdrawal, and Repayment Rates, Median Loan Debt, and Median Earnings

Proposed Regulations: Under the proposed regulations, the Department would determine and issue the completion, withdrawal, and repayment rates, median loan debt, and median earnings for each GE program, for disclosure by the institution. We also propose to give institutions an opportunity to challenge the information used by the Department in its calculation of these rates and determination of median loan debt.

Under proposed § 668.413(c), the Secretary would notify institutions of the draft completion, withdrawal, and repayment rates calculated under § 668.413(b) and the information that the Secretary used to calculate those rates. The Secretary would also notify institutions of the median loan debt and median earnings for the applicable cohort period of the students who completed each program, the students who withdrew from each program, or both the students who completed and the students who withdrew from each program.

Under proposed § 668.413(d)(1), an institution would be permitted to challenge the draft completion, withdrawal, and repayment rates and draft median loan debt amounts provided by the Secretary. The proposed procedures would mirror the procedures used for challenges to a GE program's draft D/E rates. Specifically, the institution would have 45 days after the Secretary notifies the institution of its draft completion, withdrawal, and repayment rates and the median loan debt to challenge the accuracy of the information that the Secretary used to calculate those rates and the median loan debt by providing evidence demonstrating that the information was incorrect. If an institution does not challenge the draft completion, withdrawal, or repayment rates, or median loan debt, those draft rates and median loan debt would become the final rates and median loan debt under proposed § 668.413(e). Following any challenge to the rates and median loan debt, the Secretary would issue a notice of determination under proposed § 668.413(e) indicating whether the challenge was accepted and the final rate or rates and the median loan debt, which the institution would be required to disclose if specified by the Secretary. Under proposed § 668.413(e), the Secretary could also publish the final rates and median loan debt. As with the determinations of the D/E rates, an institution could challenge the Secretary's calculations only once for an award year and an institution that does not timely challenge the rates or median loan debt would waive any objections to those rates or median loan debt as stated in the notice from the Secretary.

Proposed § 668.413(d)(2) specifies that the Secretary would not consider any challenges to the median earnings, and proposed § 668.413(e)(2) specifies that the median earnings of a program calculated by the Secretary constitute the final median earnings for the program. After notifying an institution of its final median earnings for a GE program, the Secretary would be able to publish those earnings.

Finally, proposed § 668.413(f) would require that any material that an institution submits to the Secretary to make corrections or challenges under this section must be complete, timely, accurate, and in a format acceptable to the Secretary. Further, any challenges under this section would have to conform to the instructions provided to the institution with the notice of draft rates and median loan debt under § 668.413(c).

Reasons: The proposed regulations are intended to provide institutions, in the interest of fairness and due process, with an adequate opportunity to challenge the completion, withdrawal, and repayment rates and median loan debt determined by the Department. The proposed regulations would also establish a clear administrative process to determine when a program's completion, withdrawal, and repayment rates, median loan debt, and median earnings information are final and, therefore, required to be disclosed. The correction and challenge procedures in proposed § 668.413 mirror the related procedures in § 668.405 for calculation of the D/E rates. Please see ''§ 668.405 Issuing and challenging D/E rates'' for a more detailed description of those procedures and our reasons for proposing them.

Section 668.414 Certification Requirements for GE Programs

Current Regulations:

Certification Requirements

Under § 668.14, to participate in the title IV, HEA programs, an institution must enter into a program participation agreement (PPA) with the Secretary in which it agrees to comply with provisions governing the title IV, HEA programs. With respect to a GE program offered by the institution, the institution agrees in the PPA that there is a reasonable relationship between the length of the program and the entry-level requirements for the recognized occupation for which the program prepares students. Under § 668.14(b)(26), the Secretary considers the relationship between the program length and entry-level requirements to be reasonable if the number of clock hours provided in the program does not exceed by more than 50 percent the minimum number of clock hours that a State or Federal agency establishes for the program training. If the number of clock hours in the program exceeds 50 percent of that minimum, then the institution must provide an explanation that is acceptable to the Department of why the extra hours are justified. The institution must also be able to establish the need for the training for students to obtain employment in the recognized occupation for which the program prepares students.

Program Application Requirements

Under 34 CFR 600.20(d) of the 2011 Prior Rule, an institution would establish the title IV, HEA program eligibility of a new GE program through

a notice and application process. Under that process, the institution would notify the Department at least 90 days before it intended to provide title IV, HEA program funds to students in the program, and would provide information regarding the market need for the program, an explanation of how the program was reviewed by or developed in conjunction with State or recognized oversight entities, and other information about the program.

In reviewing an application, the Secretary would consider—

- The institution's demonstrated financial responsibility and administrative capability in operating its existing programs.
- Whether the additional educational program is one of several new programs that will replace similar programs currently provided by the institution, as opposed to supplementing or expanding the current programs provided by the institution.
- Whether the number of additional educational programs being added is inconsistent with the institution's historic program offerings, growth, and operations.
- Whether the process and determination by the institution to offer an additional educational program that leads to gainful employment in a recognized occupation is sufficient.

If the Department did not notify the institution at least 30 days prior to the start of the program, the program would be approved by default and the institution could disburse title IV, HEA program funds to eligible students enrolled in the program. However, if the Department notified the institution at least 30 days before the date the program was supposed to begin that additional information was needed, the institution would be required to provide the information and address any concerns identified by the Department before the program would be approved.

If the Secretary denied an application from an institution to offer a new program, the denial would be based on the considerations listed above, and the Secretary would explain the basis for the denial and permit the institution to respond and request reconsideration.

Proposed Regulations: Under proposed § 668.414, we would require an institution to assess its GE programs to determine whether they meet the following minimum standards (referred to as the ''certification requirements''):

(1) Each eligible GE program it offers is included in the institution's accreditation by its recognized accrediting agency, or, if the institution is a public postsecondary vocational institution, the program is approved by a recognized State agency for the approval of public postsecondary vocational education in lieu of accreditation;

(2) Each eligible GE program it offers is programmatically accredited, if such accreditation is required by a Federal governmental entity or by a governmental entity in the State in which the institution is located or by any State within the institution's MSA; and

(3) For the State in which the institution is located and in all other States within the institution's MSA, each eligible program it offers satisfies the licensure or certification requirements of those States so that a student who completes the program and seeks employment in those States qualifies to take any licensure or certification exam that is needed for the student to practice or find employment in an occupation that the program prepares students to enter.

Transitional Certification

Under proposed § 668.414(a), an institution would provide to the Department no later than December 31 of the year in which these regulations take effect, a ''transitional certification'' signed by its most senior executive officer affirming that each of its eligible GE programs then offered by the institution satisfies the certification requirements. The Secretary would accept the certification as an addendum to the institution's program participation agreement (PPA). An institution would not provide the transitional certification if, between July 1 and December 31 of the year in which these regulations take effect, it makes the certification in its PPA.

PPA Certification Requirements

Under § 668.414(b) of the proposed regulations, as a condition of its continued participation in the title IV, HEA programs, an institution would certify in its PPA with the Secretary under 34 CFR 668.14 that each of its then-eligible GE programs satisfies the certification requirements.

Establishing Eligibility and Disbursing Funds

Under proposed § 668.414(c), an institution would establish the eligibility of a GE program by updating the list of eligible programs maintained by the Department to include that program, as provided under proposed 34 CFR 600.21(a)(11)(i). In accordance with the procedures for institutional notifications under 34 CFR 600.20 and 600.21, an institution that participates in the title IV, HEA programs would update the information maintained by the Department to reflect changes at the institutional level and the program level since the institution last signed a PPA. Proposed § 600.21(a)(11)(i) would expand the existing obligation to update by requiring an institution to report any changes it makes, or that otherwise occur, for a GE program. An institution would report, for example, a change in the name or credential level of an eligible GE program it currently offers, or the addition of a GE program. When an institution updates its list of eligible programs maintained by the Department to add a GE program under proposed § 668.414(c), the institution would affirm that the program satisfies the certification requirements. Except for a program that is still subject to a three-year loss of eligibility under proposed § 668.410(b)(2), after the institution updates its list of eligible programs to include the GE program, the institution may begin to disburse title IV, HEA program funds to students enrolled in the program.

Reasons: As part of the accountability framework of the proposed regulations, we propose that an institution must certify through its PPA that its GE programs meet applicable accreditation and State and Federal licensing requirements—the certification requirements. Through the certification requirements, institutions would be required to assess whether their programs meet widely accepted minimum standards to be eligible for participation in the title IV, HEA programs. Although the 2011 Prior Rule did not include certification requirements, we believe that students who complete a program that does not meet these standards would have a difficult time obtaining, or be unable to obtain, employment in the occupation for which they received training and, consequently, would likely struggle to repay the debt they incurred for enrolling in that program. The certification requirements are intended to help prevent such outcomes and are appropriate conditions that programs must satisfy to qualify for title IV, HEA program funds as they squarely address the debt repayment concerns underlying the gainful employment eligibility provisions of the HEA.

The certification requirements, designed as an independent pillar of the accountability framework, would work together with the metrics-based standards. The certification requirements would provide a basic initial assessment of a program's title IV, HEA eligibility. For programs existing as of the effective date of the proposed regulations, the transitional

certification, if applicable, and the certification through the existing PPA process would establish a program's baseline eligibility as a gainful employment program under the HEA. Thereafter, if an institution seeks to establish or reestablish a program's eligibility, it would do so, first, through the institutional notification procedures under 34 CFR 600.20 and 600.21 and, subsequently, as part of its established PPA process. Once sufficient data are available to assess program performance using the GE measures, the accountability metrics would be the principal method for assessing a program's continuing eligibility for title IV, HEA program funds.

The negotiators disagreed on what kind of standards and what kind of process, if any, the Department should use to establish eligibility for programs existing as of the effective date of the proposed regulations and for programs that an institution subsequently seeks to newly establish or reestablish.

Certification Standards

Some negotiators and members of the public who attended the negotiated rulemaking meetings raised significant concerns about students who have been harmed by enrolling in programs that purported to train the students to work in certain occupations but that did not meet all governmental requirements or accrediting standards necessary for the students to get the jobs associated with their training. The negotiators explained that there are cases where programs lack programmatic accreditation, leaving students who complete the program unable to work in a particular occupation without meeting alternative standards such as having years of experience working in lesser-skilled and lower-paying jobs in that field.

In view of the negotiators' concerns, we believe it is reasonable to require an institution to certify that each GE program it offers meets any applicable State or Federal licensing and accrediting requirements for the occupations for which the program purports to prepare students to enter.

Some of the negotiators argued that the basis for making any initial title IV, HEA program eligibility assessment—whether for existing programs or new programs—should be more comprehensive. For example, with respect to new programs, some of the negotiators proposed that the assessment should also include, among other things, consideration of the market need for the program, projected tuition and fees, projected instructional expenses, projected income for students who complete the program, the projected attrition rate, and the projected debt-to-earnings ratios for students. Under the negotiator proposals, projections of market need, starting income, and performance under debt measures would be obtained through employer surveys and State databases. Those negotiators suggested that an eligibility determination for existing programs would consider similar matters, but rely on actual data rather than projections.

Although we agree that many of the considerations the negotiators proposed are relevant to whether a program would prepare students for gainful employment, and note that market need was a factor included in the 2011 Prior Rule, we believe that the most critical measure of title IV, HEA program eligibility—and the measure supported by the legislative history—is whether students will be able to pay back the educational debt they incur to enroll in the occupational training. We believe that this measure is best made using actual student outcomes as calculated by the Department using the proposed accountability metrics. Accordingly, we believe that a more limited inquiry upon implementation of the proposed regulations and when an institution seeks to newly establish the eligibility of a program in order to ensure that basic requirements are met is sufficient to support the more detailed assessment of continuing eligibility that would be made using the accountability metrics. Further, we believe that there is less burden on institutions, and a better investment of Department resources, if the program's eligibility is thoroughly assessed through one, rather than multiple processes, and by using actual student outcomes instead of projections that may not be reliable. This approach also takes into consideration that institutions will be providing disclosures about these programs and their outcomes separately from the eligibility determinations, with students benefitting from both.

Certification Process

In this regard, we have proposed that, both for programs existing at the effective date of the proposed regulations and for programs that an institution seeks to newly establish or reestablish, the certifications would be incorporated into the PPA recertification process, as it is a streamlined, administrative process with which institutions are already familiar. This approach is consistent with section 487(a)(21) of the HEA, which establishes requirements for an institution's PPA, provides that an institution must meet the requirements established by the Secretary and accrediting agencies or associations, and requires an institution to provide evidence to the Secretary that the institution has the authority to operate within a State.

We expect that using an existing process for these certifications would lessen institutional burden and facilitate compliance. Because institutional schedules vary with respect to the PPA process, we have proposed that institutions that are not scheduled for recertification of their PPA within six months of the effective date of the proposed regulations make a transitional certification for then-existing programs. The six-month period, coupled with the period of time from when the final regulations are published before they go into effect on July 1 would provide time for the Department to establish and publicize the procedures that institutions would follow to submit the certifications, as well as provide time for institutions to ensure their GE programs are in compliance with the certification requirements and submit the required certifications. Given that the certification would affirm compliance with a statutory condition for eligibility for receipt of title IV, HEA program funds, we expect that institutions would undertake the self-assessment in good faith and based on appropriate due diligence.

Although we have proposed that institutions make the same basic certifications and generally follow the same process with respect to both programs existing as of the effective date of the proposed regulations and programs that an institution subsequently seeks to newly establish or reestablish, some negotiators suggested that new programs may warrant a closer review by the Department. That is, although negotiators recognized that it might be overly burdensome on the Department to conduct a full review of all existing programs, some believed the Department is obligated, once the proposed regulations are in effect, to make an up-front, substantive eligibility determination for new programs, and that such review would be necessary to prevent institutions from establishing inadequate programs for limited time periods and avoiding altogether any substantive review under the GE measures.

The negotiators expressed differing views on the extent to which the Department should require institutions to apply to add new GE programs and the information the Department would require institutions to provide in those applications. Students, consumer

advocates, and State Attorneys General urged the Department to develop a robust new program approval process, arguing that institutions should have to demonstrate for each new GE program that the projected ratio between their planned tuition and fees and the estimated earnings of students who complete the program would meet the GE measures. They argued that institutions should have to provide documentation of how they determined the expected earnings of graduates of the program and the market viability of the program. Such documentation would include information from likely employers stating that the program would prepare students for positions in demand in the field and indicating likely entry-level or expected salaries. Further, they argued that institutions should have to demonstrate in their applications that the new GE program would meet any applicable required, or generally preferred, programmatic accreditation and State licensure requirements and would adequately provide for any necessary experiential placements, because otherwise the students who complete the program would be unable to obtain gainful employment.

Negotiators from institutions and accrediting agencies generally argued for a meaningful application process that would limit the burden on institutions as much as possible. They suggested targeting the application requirements to programs with demonstrated difficulty passing the GE measures, or otherwise narrowing the scope of institutions and programs that would have to apply in order to establish title IV, HEA program eligibility for a new GE program. Several parties recommended that the Department should avoid duplicating processes already in place with States and accrediting agencies, particularly in States or in fields that already have rigorous approval processes. These negotiators suggested approaches such as exempting institutions from the approval process if they could demonstrate that they go through a more stringent process for another entity, and allowing institutions to submit information that they assemble for other non-Departmental approval processes with annotations indicating which sections would address the GE requirements. The negotiators also raised concerns that an approval process would limit institutions' flexibility to quickly add new GE programs in response to changing demands in the field or industry. Overall, these negotiators believed that any application process should have clear and objective standards that an institution must meet for a GE program to be approved.

After considering widely varying options regarding which new programs would require Department approval and the content of the institution's application for approval, we are not proposing separate approval requirements for new programs. At this time, we believe that the accountability metrics are the best measures of whether a program prepares students for gainful employment, as we are concerned that a more rigorous approval process would require an undue amount of time and resources from both the Department and institutions that would be better spent on program improvements. For these reasons, instead of establishing the eligibility of a GE program under an application process, an institution would update its list of eligible programs maintained by the Department to include that program. We view this list of eligible programs as an extension of the institution's PPA because the list defines the nature and scope of the institution's eligibility and certification to participate in the title IV, HEA programs under 34 CFR 600.20(e). In updating its list of eligible programs to include that program, the institution would be certifying that the program satisfies the certification requirements, and, accordingly, the Department would recognize that program as an eligible program within the scope of the institution's participation. Under the proposed regulations, an institution could not update its list of eligible programs to include a GE program that is subject to the three-year loss of eligibility provision under proposed § 668.410(b)(2) until the three-year period expired.

Section 668.415 Severability

Current Regulations: None.

Proposed Regulations: Proposed § 668.415 would make clear that, if any part of the proposed regulations is held invalid by a court, the remainder would still be in effect.

Reasons: For the reasons described in ''§ 668.401 Scope and purpose,'' through the proposed regulations we intend to:

- Define what it means for a program to provide training that prepares students for gainful employment in a recognized occupation;
- Establish measures that would distinguish programs that provide quality, affordable education and training to their students from those programs that leave students with unaffordable levels of loan debt in relation to their earnings; and
- Establish reporting and disclosure requirements that would increase the transparency of student outcomes of GE programs so that accurate and comparable information is disseminated to students, prospective students, and their families, to help them make better informed decisions about where to invest their time and money in pursuit of a postsecondary degree or credential; the public, taxpayers, and the Government, to help them better safeguard the Federal investment in these programs; and institutions, to provide them meaningful information that they could use to improve student outcomes in these programs.

We believe that each of the proposed provisions serves one or more important, related, but distinct, purposes. Each of the requirements provides value to students, prospective students, and their families, to the public, taxpayers, and the Government, and to institutions separate from, and in addition to, the value provided by the other requirements. To best serve these purposes, we would include this administrative provision in the regulations to make clear that the regulations are designed to operate independently of each other and to convey the Department's intent that the potential invalidity of one provision should not affect the remainder of the provisions.

Section 600.2 Definitions; Section 600.10 Date, Extent, Duration, and Consequence of Eligibility; Section 600.20 Notice and Application Procedures for Establishing, Reestablishing, Maintaining, or Expanding Institutional Eligibility and Certification; Section 600.21 Updating Application Information; Section 668.6 Reporting and Disclosure Requirements for Programs That Prepare Students for Gainful Employment in a Recognized Occupation; Section 668.7 Gainful Employment in a Recognized Occupation; Section 668.8 Eligible Program; Section 668.14 Program Participation Agreement

Current Regulations: The current regulations establish requirements for institutions to apply to participate in the title IV, HEA programs; to continue participating beyond the expiration date of an institution's program participation agreement; or to continue participating when new approval is required due to a change of ownership that results in a change of control. The current regulations also include requirements for an institution to provide timely notice to the Secretary when expanding its participation in title IV, HEA programs by adding new educational

programs or locations. Similarly, the current regulations include requirements to identify when an institution must first obtain approval for a new educational program or location before disbursing title IV, HEA program funds to students enrolled in the program or attending the new location. Section 600.10(c) of the 2011 Prior Rule established new notice and application requirements for institutions proposing to add new GE programs. We discuss those specific regulations and our proposed changes to them in ''§ 668.414 Certification requirements for GE programs.'' Sections 668.6 and 668.7 are parts of the 2011 Final Rules.

Proposed Regulations: We propose to make a number of technical and conforming changes to the current regulations, including sections of the 2011 Current Rule, and to the regulations from the 2011 Prior Rule.

- The definition in § 600.2 of ''recognized occupation'' would be removed and replaced with a slightly modified definition.
- Section 600.10(c) would be revised to refer to proposed subpart Q to identify the conditions when time restrictions would exist that prohibit an institution from establishing or reestablishing the eligibility of a GE program.
- Proposed § 600.10(c)(1)–(3) would incorporate the provisions of the proposed regulations into existing new program approval requirements. We would also revise some of the language concerning the need for institutions that are provisionally certified, and institutions offering direct assessment programs, to obtain approval for new programs without changing the applicable requirements.
- We propose to revise § 600.20(c)(1) to clarify that the circumstances when an institution must apply to expand its eligibility include the addition of new programs and new locations.
- Section 600.21(a)(11) would be revised to require an institution to update the list of programs identified in its most recent program participation application when a GE program is established, is voluntarily discontinued, loses eligibility, or has other changes to the program's name, CIP code, or credential level.
- Sections 668.6 and 668.7 would be removed and reserved.
- Section 668.8 would be amended to replace the reference to § 668.6 in paragraph (d)(2)(iii) and (d)(3)(ii) with a reference to proposed subpart Q.
- Section 668.14(a)(26) would clarify that a GE program offered by an institution is required to prepare students for gainful employment in a recognized occupation.
- Section 668.14(a)(26) would be revised to include a reference to the GE program certification requirements of proposed § 668.414.
- The authority citations in §§ 600.2, 600.10, 600.20, and 600.21 would be revised.

Reasons: The proposed changes to the authority citations are technical in nature. The other changes would be made to ensure consistency and conformity between the proposed regulations and existing eligibility and related requirements for title IV, HEA programs, and to reflect the court's decision in *APSCU* v. *Duncan.*

The definition of ''recognized occupation'' in § 600.2 would be restated to clarify that this provision would be in effect under the proposed regulations.

The proposed changes to § 600.10(c) would make the existing regulation text consistent and in conformity with the proposed regulations. Proposed § 600.10(c)(2) would provide that except as provided in § 600.20(c), an eligible institution does not have to obtain the approval of the Secretary to establish the eligibility of any program not previously described in proposed § 600.10(c)(1).

The proposed change to § 600.20(c)(1) to add a reference to new programs is a technical change, as the current regulations refer only to additions of locations in § 600.20(c)(1), whereas § 600.20(c)(1)(v) provides that the Secretary can advise an institution by letter that it must apply for approval of new programs, as well as additional locations, under § 600.10(c). Adding the reference to new programs in § 600.20(c)(1) would make that language consistent with the range of actions that are described in § 600.20(c)(1)(i)–(v).

The revisions to § 600.21(a)(11) would require an institution to update the list of programs it offers that was provided in its last recertification application to the Department to include any new GE programs it offers, to account for any changes in the status of its GE programs, and to track any significant change in the items the Department uses to track GE programs, such as a program's name, CIP code, or credential level.

Sections 668.6 and 668.7, which were a part of the 2011 Final Rules, would be removed and reserved because they were either vacated or vacated in part by the court decision in *APSCU* v. *Duncan,* and would be replaced by the proposed regulations.

Section 668.8(d)(2)(iii) and (d)(3)(ii) would be amended to replace § 668.6 as the reference to the requirements for GE programs with a reference to proposed subpart Q, which would contain the requirements for GE programs under the proposed regulations.

Section 668.14(a)(26) would be amended to change the description of GE programs as having a stated objective to prepare students for gainful employment in a recognized occupation to instead say that a GE program offered by an institution is required to prepare students for gainful employment in a recognized occupation. With this revision, this section would more closely track the relevant statutory language in the HEA and would be consistent with the proposed requirements for GE programs in subpart Q.

Section 668.14(a)(26) would be revised to include a reference to the GE program certifications in proposed § 668.414.

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 economically significant as it is estimated to have an annual effect on the economy of more than $100 million. Therefore, this proposed action is 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 regulations only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action 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 of this regulatory action. The potential costs associated with this regulatory action are those resulting from implementing statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Under the heading *Paperwork Reduction Act of 1995,* we identify and explain burdens specifically associated with information collection requirements.

A detailed analysis, including our Initial Regulatory Flexibility Analysis, is found in Appendix A to this document.

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, § 668.410 Consequences of GE measures.)
- 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.

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. The table at the end of this section summarizes the estimated burden on small entities, primarily institutions and applicants, arising from the paperwork associated with the proposed regulations.

Sections 668.405, 668.406, 668.408, 668.410, 668.411, 668.412, 668.413, 668.414, 668.504, 668.509, 668.510, 668.511, 668.512, 668.513, and 668.514 contain information collection requirements. Under the PRA, the Department has submitted a copy of these sections, related forms, and Information Collections Requests (ICRs) 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.

Discussion

Section 668.405 Issuing and Challenging D/E Rates

Requirements: Under the proposed regulations, the Secretary would create a list of students who completed a GE program during the applicable cohort period from data reported by the institution. The list would indicate whether the list is of students who completed the program in the two-year cohort period or in the four-year cohort period, and it would also indicate which of the students on the list would be excluded from the D/E rates calculations under proposed § 668.404(e), for one of the following reasons: A military deferment, a loan discharge for total and permanent disability, enrollment on at least a half-time basis, completing a higher undergraduate or graduate credentialed program, or death.

The institution would then have the opportunity, within 45 days of receiving the student list from the Secretary, to propose corrections to the list. After receiving the institution's proposed corrections, the Secretary would notify the institution whether a proposed correction is accepted and would use

any corrected information to create the final list.

Burden Calculation: We have estimated that the 2010–2011 and the 2011–2012 total number of students enrolled in GE programs is projected to be 6,436,806 (the 2010–2011 total of 3,341,856 GE students plus the 2011–2012 total of 3,094,950 GE students).

We estimate that 89 percent of the total enrollment in GE programs would be at for-profit institutions, 2 percent would be at private non-profit institutions, and 9 percent would be at public institutions. As indicated in connection with the 2011 Final Rules (75 FR 66933), we estimate that 16 percent of students enrolled in GE programs would complete their course of study. Therefore, we estimate that there would be 916,601 students who complete their programs at for-profit institutions (6,436,806 students times 89 percent of total enrollment at for-profit institutions times 16 percent, the percentage of students who complete programs) during the two-year cohort period.

On average, we estimate that it would take for-profit institutional staff 0.17 hours (10 minutes) per student to review the list to determine whether a student should be included or excluded under proposed § 668.404(e) and, if included, whether the student's identity information requires correction, and then to obtain the evidence to substantiate any inclusion, exclusion, or correction, increasing burden by 155,822 hours (916,601 students times .17 hours) under OMB 1845—NEW1.

We estimate that there would be 20,598 students who complete their programs at private non-profit institutions (6,436,806 students times 2 percent of total enrollment at private non-profit institutions times 16 percent, the percentage of students who complete programs) during the two-year cohort period.

On average, we estimate that it would take private non-profit institutional staff 0.17 hours (10 minutes) per student to review the list to determine whether a student should be included or excluded under proposed § 668.404(e) and, if included, whether the student's identity information requires correction, and then to obtain the evidence to substantiate any inclusion, exclusion, or correction, increasing burden by 3,502 hours (20,598 students times .17 hours) under OMB 1845—NEW1.

We estimate that there would be 92,690 students who complete their programs at public institutions (6,436,806 students times 9 percent of the total enrollment at public institutions times 16 percent, the percentage of students who complete programs) during the two-year cohort period.

On average, we estimate that it would take public institutional staff 0.17 hours (10 minutes) per student to review the list to determine whether a student should be included or excluded under proposed § 668.404(e) and, if included, whether the student's identity information requires correction, and then to obtain the evidence to substantiate any inclusion, exclusion, or correction, increasing burden by 15,757 hours (92,690 students times .17 hours) under OMB 1845—NEW1.

Collectively, the total number of students who complete their programs and who would be included on the lists that would be provided to institutions is a projected 1,029,889 students, thus increasing burden by 175,081 hours under OMB Control Number 1845—NEW1.

Requirements: Under the proposed regulations at § 668.405(f), after finalizing the list of students, the Secretary would obtain from SSA the mean and median earnings, in aggregate form, of those students on the list whom SSA has matched to its earnings data for the most recently completed calendar year for which SSA has validated earnings information. SSA would provide the Secretary no individual data on these students; rather, SSA would advise the Secretary of the number of students it could not, for any reason, match against its records of earnings. In the D/E rates calculation, the Secretary would exclude from the loan debts of the students on the list the same number of loan debts as SSA non-matches, starting with the highest loan debt. The remaining debts would then be used to calculate the mean and median earnings for the listed students. The Secretary would calculate draft D/E rates using the higher of the mean or median annual earnings reported by SSA under proposed § 668.405(e), notify the institution of the GE program's draft D/E rates, and provide the institution with the individual loan data on which the rates were calculated.

Under the proposed regulations at § 668.405(f), the institution would have the opportunity, within 45 days of the Secretary's notice of the draft D/E rates, to challenge, under procedures established by the Secretary, the accuracy of the rates. The institution would be permitted only to challenge the loan data used to calculate the draft D/E rates. Because SSA does not disclose data that would enable the Secretary to assess a challenge to reported earnings, the Secretary would not consider any challenge to the earnings used to calculate the draft D/E rates. The Secretary would notify the institution whether a proposed challenge is accepted and use any corrected information from the challenge to recalculate the GE program's draft D/E rates.

Burden Calculation: There are 9,986 programs that would be evaluated under the proposed regulations. Our analysis estimates that of those 9,986 programs, with respect to the D/E rates measure, 7,604 programs would be passing, 929 programs would be in the zone, and 1,453 programs would fail.

We estimate that the number of students at for-profit institutions who complete programs that are in the zone would be 52,395 (327,468 students enrolled in zone programs times 16 percent, the percentage of students who complete programs) and the number who complete failing programs at for-profit institutions would be 135,118 (844,488 students enrolled in failing programs times 16 percent, the percentage of students who complete programs), for a total of 187,513 students (52,395 students plus 135,118 students).

We estimate that it would take institutional staff an average of 0.25 hours (15 minutes) per student to examine the loan data and determine whether to select a record for challenge, resulting in a burden increase of 46,878 hours (187,513 students times .25 hours) in OMB Control Number 1845—NEW1.

We estimate that the number of students at private non-profit institutions who complete programs that are in the zone would be 369 (2,308 students enrolled in zone programs times 16 percent, the percentage of students who complete programs) and the number who complete failing programs at private non-profit institutions would be 868 (5,423 students enrolled in failing programs times 16 percent, the percentage of students who complete programs), for a total of 1,237 students (369 students plus 868 students).

We estimate that it would take institutional staff an average of 0.25 hours (15 minutes) per student to examine the loan data and determine whether to select a record for challenge, resulting in a burden increase of 309 hours (1,237 students times .25 hours) in OMB Control Number 1845—NEW1.

We estimate that the number of students at public institutions who complete programs that are in the zone would be 100 (628 students enrolled in zone programs times 16 percent, the percentage of students who complete programs) and the number who complete failing programs at public

institutions would be 2,109 (13,178 students enrolled in failing programs times 16 percent, the percentage of students who complete programs), for a total of 2,209 students (100 students plus 2,109 students).

We estimate that it would take institutional staff an average of 0.25 hours (15 minutes) per student to examine the loan data and determine whether to select a record for challenge, resulting in a burden increase of 552 hours (2,209 students times .25 hours) in OMB Control Number 1845—NEW1.

Collectively, the burden for institutions to examine loan records and to determine whether to make a draft D/E rates challenge would increase burden by 47,739 hours under OMB Control Number 1845—NEW1.

The total increase in burden for § 668.405 would be 222,820 hours under OMB Control Number 1845—NEW1.

Section 668.406 D/E Rates Alternate Earnings Appeals and Showings of Mitigating Circumstances

Alternate Earnings Appeals

Requirements: The proposed regulations would provide an opportunity for an institution to submit to the Secretary an alternate earnings appeal if, using data obtained from SSA, the Secretary determined that the program was a failing or in the zone under the D/E rates measure. In submitting an alternate earnings appeal, the institution would seek to demonstrate that the earnings of students who completed the GE program in the applicable cohort period are sufficient to pass the D/E rates measure. The institution would base its appeal on alternate earnings evidence from either a survey conducted in accordance with requirements established by NCES or from State-sponsored data systems. In either instance, the alternate earnings data would be from the same calendar year for which the Secretary obtained earnings data from SSA for use in the D/E rates calculations. An appeal could only be filed once for a GE program's award year's D/E rates.

An institution with a GE program that is failing or in the zone that wishes to submit alternate earnings appeal information must notify the Secretary of its intent to do so no earlier than the date that the Secretary provides the institution with its draft D/E rates and no later than three business days after the date the Secretary issues the notice of determination of the program's D/E rates. No later than 60 days after the date the Secretary issues the notice of determination, the institution must submit its appeal information under procedures established by the Secretary. The appeal must include all supporting documentation related to recalculating the D/E rates using alternate earnings data.

Survey: If an institution wishes to submit an appeal by providing survey results data, it would include in the universe of students that would be subject to survey sampling all of the program's former students who completed the program during the applicable cohort period and who received title IV, HEA program funds.

The Secretary would publish in the **Federal Register** an Earnings Survey Form developed by NCES. The Earnings Survey Form would be a model field-tested sample survey that may be used by an institution in accordance with the survey standards, such as a required response rate or subsequent non-response bias analysis that the institution must meet to guarantee the validity and reliability of the results. Although use of the sample survey would not be required and the Earnings Survey Form would be provided by NCES only as a service to institutions, an institution that chooses not to use the Earnings Survey Form would be required to conduct its survey in accordance with the published NCES standards.

Under the proposed regulations, the institution would certify that the survey was conducted in accordance with the requirements of the NCES Earnings Survey Form and submit an examination-level attestation engagement report prepared by an independent public accountant or independent governmental auditor, as appropriate, that the survey was conducted in accordance with the standards in the NCES Earnings Survey Form. The attestation would be conducted in accordance with the attestation standards contained in the GAO's Government Auditing Standards promulgated by the Comptroller General of the United States and with procedures for attestations contained in guides developed by and available from the Department's Office of Inspector General.

Burden Calculation: We estimate that for-profit institutions would have 1,364 gainful employment programs in the zone and that 910 programs would be failing for a total of 2,274 programs. We expect that most institutions would determine that SSA data reflect accurately the earnings of students and would therefore not elect to conduct the survey. Accordingly, we estimate that for-profit institutions would submit alternate earnings appeals under the survey appeal option for 10 percent of those programs, which would equal 227 appeals annually. We estimate that conducting the survey, providing the institutional certification, and obtaining the examination-level attestation engagement report would total, on average, 100 hours of increased burden, therefore burden would increase 22,700 hours (227 survey appeals times 100 hours) under OMB Control Number 1845—NEW2.

We estimate that private-non-profit institutions would have 12 gainful employment programs in the zone and that 34 programs would be failing for a total of 46 programs. We expect that most institutions would determine that SSA data reflect accurately the earnings of students and would therefore not elect to conduct the survey. Accordingly, we estimate that private non-profit institutions would submit alternate earnings appeals under the survey appeal option for 10 percent of those programs, which would equal 5 appeals annually. We estimate that conducting the survey, providing the institutional certification, and obtaining the examination-level attestation engagement report would total, on average, 100 hours of increased burden, therefore burden would increase 500 hours (5 survey appeals times 100 hours) under OMB Control Number 1845—NEW2.

We estimate that public institutions would have 7 gainful employment programs in the zone and that 55 programs would be failing for a total of 62 programs. We expect that most institutions would determine that SSA data reflect accurately the earnings of students and would therefore not elect to conduct the survey. Accordingly, we estimate that public institutions would submit alternate earnings appeals under the survey appeal option for 10 percent of those programs, which would equal 6 appeals annually. We estimate that conducting the survey, providing the institutional certification, and obtaining the examination-level attestation engagement report would total, on average, 100 hours of increased burden, therefore burden would increase 600 hours (6 survey appeals times 100 hours) under OMB Control Number 1845—NEW2.

Collectively, the projected burden associated with conducting an alternative earnings survey would increase burden by 23,800 hours under OMB Control Number 1845—NEW2.

State data systems: An institution that wishes to submit an appeal by providing State data would include in the list it submits to the State or States all of the students who were included on the list

sent by the Secretary to the SSA under proposed § 668.405(d). That is, the institution must include the program's former students who received title IV, HEA program funds, who completed the program during the applicable cohort period, and who were not excluded under proposed § 668.404(e). The earnings information obtained from the State or States would have to match 50 percent of the total number of students included on the institution's list, and the number matched would have to be 30 or more.

Burden Calculation: We estimate that there would be 1,364 failing GE programs at for-profit institutions and 910 programs in the zone, for a total of 2,274 programs. We expect that most institutions would determine that SSA data reflect accurately the earnings of students who completed a program and would therefore not elect to submit earnings data from a State-sponsored system. Accordingly, we estimate that in 10 percent of those cases, institutions would obtain earnings data from a State-sponsored system, resulting in approximately 227 appeals.

We estimate that, on average each appeal would take 20 hours, including execution of an agreement for data sharing and privacy protection under the Family Educational Rights and Privacy Act (20 U.S.C. 1232g) (FERPA) between the institution and the State agency, preparing the list(s), submitting the list(s) to the appropriate State agency, reviewing the results, calculating the proposed revised D/E rates, and submitting those results to the Secretary. Therefore, burden would increase by 4,540 hours (227 state system appeals times 20 hours under OMB Control Number 1845—NEW2.

We estimate that there would be 34 failing GE programs at private non-profit institutions and 12 programs in the zone, for a total of 46 programs. We expect that most institutions would determine that SSA data reflect accurately the earnings of students who completed a program and would therefore not elect to submit earnings data from a State-sponsored system. Accordingly, we estimate that in 10 percent of those cases, institutions would obtain earnings data from a State-sponsored system, resulting in 5 appeals.

We estimate that, on average each appeal would take 20 hours, including execution of an agreement for data sharing and privacy protection under FERPA between the institution and the State agency, preparing the list(s), submitting the list(s) to the appropriate State agency, reviewing the results, calculating the proposed revised D/E rates, and submitting those results to the Secretary. Therefore burden would increase by 100 hours (5 state system appeals times 20 hours) under OMB Control Number 1845—NEW2.

We estimate that there would be 55 failing GE programs at public institutions and 7 programs in the zone, for a total of 62 programs. We expect that most institutions would determine that SSA data reflect accurately the earnings of students who completed a program and would therefore not elect to submit earnings data from a State-sponsored system. Accordingly, we estimate that in 10 percent of those cases institutions would obtain earnings data from a State-sponsored system, resulting in approximately 6 appeals. We estimate that, on average each appeal would take 20 hours, including execution of an agreement for data sharing and privacy protection under FERPA between the institution and the State agency, preparing the list(s), submitting the list(s) to the appropriate State agency, reviewing the results, calculating the proposed revised D/E rates, and submitting those results to the Secretary. Therefore, burden would increase by 120 hours (6 state system appeals times 20 hours) under OMB Control Number 1845—NEW2.

Showings of Mitigating Circumstances

Requirements: If a GE program is failing or in the zone under the D/E rates measure, an institution may avoid or mitigate the consequences that the Secretary may otherwise impose under § 668.410 by making a successful showing of mitigating circumstances with respect to the program's most recent final D/E rates issued by the Secretary. The institution may make a showing of mitigating circumstances if less than 50 percent of all the individuals who completed the program during the applicable cohort period, including those who received and those who did not receive title IV, HEA program funds, incurred loan debt (as defined in § 668.404(d)) for enrollment in the program. If such mitigating circumstances are shown, the program would be deemed to pass the D/E rates measure for that year. In submitting the showing of mitigating circumstances, the chief executive officer of the institution would have to affirm the accuracy of the data used to calculate the borrowing rate. Additionally, the institution would be required to maintain those data for program review or audit purposes.

To make a showing of mitigating circumstances for a program with D/E rates that are failing or in the zone, an institution would calculate the program's ''borrowing rate'' by:

Step 1. Determining the number of individuals, including individuals who did not receive title IV, HEA program funds, who completed the program during the applicable cohort period;

Step 2. Of all of the individuals in Step 1, determining the number who incurred loan debt for enrollment in the program; and

Step 3. Dividing the number in Step 2 by the number in Step 1.

If the borrowing rate for the program is less than 50 percent, the program would be deemed to pass the D/E rates measure for that year. In submitting the showing of mitigating circumstances, the chief executive officer of the institution would have to affirm the accuracy of the data used to calculate the borrowing rate. In addition, the institution would be required to maintain those data for program review or audit purposes.

Burden Calculation: We estimate that 2 percent of the total 2,274 programs at for-profit institutions (910 zone programs plus 1,364 failing programs), or 45 programs at for-profit institutions, would make a showing of mitigating circumstances based on a borrowing rate of less than 50 percent and that generally this would be an automated process. However, there would be some situations, probably at small institutions, where the process could be a manual process, and, therefore, we estimate the average amount of time to collect the data and make the showing would on average be 5 hours per showing. The estimated burden would be 225 hours (45 showings times 5 hours per showing) under OMB Control Number 1845—NEW2.

We estimate that 5 percent of the total 46 programs at private non-profit institutions (12 zone programs plus 34 failing programs), or 2 programs at private non-profit institutions, would make a showing of mitigating circumstances based on borrowing rate of less than 50 percent and that generally this would be an automated process. However, there would be some situations, probably at small institutions, where the process could be a manual process, and, therefore, we estimate the average amount of time to collect the data and make the showing would on average be 5 hours per showing. The estimated burden would be 10 hours (2 showings times 5 hours per showing) under OMB Control Number 1845—NEW2.

We estimate that 50 percent of the total 62 programs at public institutions (7 zone programs plus 55 failing programs), or 31 programs at public

institutions, would make a showing of mitigating circumstances based on a borrowing rate of less than 50 percent and that generally this would be an automated process. However, there would be some situations, probably at small institutions, where the process could be a manual process, and, therefore, we estimate the average amount of time to collect the data and make the showing would on average be 5 hours per showing. The estimated burden would be 155 hours (45 showings times 5 hours per showing) under OMB Control Number 1845—NEW2.

Collectively, burden would increase by 5,150 hours under OMB Control Number 1845—NEW2.

Requirements: Under the proposed regulations, to pursue an alternate earnings appeal or to make a showing of mitigating circumstances, the institution must notify the Secretary of its intent to submit an appeal or make a showing no later than three business days after the Secretary issues the final D/E rates. This notification must be made no earlier than the date the Secretary provides the institution with draft D/E rates and no later than three business days after the Secretary issues the final D/E rates.

Burden Calculation: We estimated above that for-profit institutions would have annually 227 alternate earnings survey appeals, 227 State-sponsored data system appeals, and 45 showings of mitigating circumstances for a total of 499 appeals and showings. We estimate that completing and submitting a notice of intent to submit an appeal or make a showing increases burden, on average, by 0.25 hours per submission or 125 hours (499 submissions times 0.25 hours) under OMB Control 1845—NEW2.

We estimated above that private non-profit institutions would have annually 5 alternate earnings survey appeals, 5 State-sponsored data system appeals, and 2 showings of mitigating circumstances for a total of 12 appeals and showings. We estimate that completing and submitting a notice of intent to submit an appeal or make a showing increases burden, on average, by 0.25 hours per submission or 3 hours (12 submissions times 0.25 hours) under OMB Control 1845—NEW2.

We estimated above that public institutions would have annually 6 alternate earnings survey appeals, 6 State-sponsored data system appeals, and 31 showings of mitigating circumstances for a total of 43 appeals and showings. We estimate that completing and submitting a notice of intent to submit an appeal or make a showing increases burden, on average, by 0.25 hours per submission or 11 hours (43 submissions times 0.25 hours) under OMB Control 1845—NEW2.

Collectively, the projected burden associated with completing and submitting a notice of intent would increase burden by 139 hours under OMB Control Number 1845—NEW2.

The total increase in burden for § 668.406 would be 29,089 hours under OMB Control Number 1845—NEW2.

Section 668.408 Issuing and Challenging pCDR

The burden associated with issuing and challenging pCDR is located in Subpart R as indicated below.

Section 668.410 Consequences of GE Measures

Requirements: Under proposed § 668.410(a), if we notify an institution that a GE program could become ineligible based on a final GE measure for the next award or fiscal year, within 30 days the institution would have to provide a written warning directly to each student enrolled in the program. To the extent practicable, an institution would have to provide this warning in other languages for enrolled students for whom English is not their first language.

In the warning, an institution would be required to describe the options available to the student to continue his or her education in the event that the program loses its eligibility for title IV, HEA program funds. Specifically, the warning would inform the student of whether the institution will allow the student to transfer to another program at the institution; continue to provide instruction in the program to allow the student to complete the program; or refund the tuition, fees, and other required charges paid by, or on behalf of, the student for attending the program.

Under proposed § 668.410(a)(1), an affected institution must provide a written warning (a) by hand-delivering it individually, (b) through a group presentation, or (c) via email.

Burden Calculation: We estimate that the written warnings would be hand-delivered to 10 percent of the affected students, delivered through a group presentation to another 10 percent of the affected students, and delivered through the student's primary email address used by the institution to the remaining 80 percent.

Based upon 2009–2010 reported data, 2,703,851 students were enrolled at for-profit institutions. Of that number, we estimate that 327,468 students were enrolled in zone programs and 844,488 students were enrolled in failing programs at for-profit institutions. Thus, the total number of warnings would have to be provided to 1,171,956 students enrolled in GE programs at for-profit institutions.

Of the 1,171,956 projected number of warnings to be provided to enrolled students at for-profit institutions, we estimate that 117,196 students (1,171,956 students times 10 percent) would receive the warning individually and that it would take on average 0.17 hours (10 minutes) per warning to print the warning, locate the student, and deliver the warning to each affected student. This would increase burden by 19,923 hours (117,196 students times 0.17 hours) under OMB Control Number 1845—NEW1.

Of the 1,171,956 projected warnings to be provided to enrolled students at for-profit institutions, we estimate that 117,196 students (1,171,956 students times 10 percent) would receive the warning at a group presentation and that it would take on average 0.33 hours (20 minutes) per warning to print the warning, conduct the presentation, and answer questions about the warning to each affected student. This would increase burden by 38,675 hours (117,196 times 0.33 hours) under OMB Control Number 1845—NEW1.

Of the 1,171,956 projected warnings to be provided to enrolled students at for-profit institutions, we estimate that 937,564 students (1,171,956 students times 80 percent) would receive the warning via email and that it would take on average 0.017 hours (1 minute) per warning to send the warning to each affected student. This would increase burden by 15,939 hours (937,564 students times 0.017 hours) under OMB Control Number 1845—NEW1.

Based upon 2009–2010 reported data, 57,700 students were enrolled at private non-profit institutions. Of that number of students, we estimate that 2,308 students would be enrolled in zone programs and 5,423 students would be enrolled in failing programs at private non-profit institutions. Thus, the total number of warnings would have to be provided to 7,731 students (2,308 students plus 5,423 students) enrolled in GE programs at private non-profit institutions.

Of the 7,731 projected number of warnings to be provided to enrolled students at non-profit institutions, we estimate that 773 students (7,731 students times 10 percent) would receive the warning individually and that it would take on average 0.17 hours (10 minutes) per warning to print the warning, locate the student, and deliver the warning to each affected student. This would increase burden by 131 hours (773 students times 0.17 hours)

under OMB Control Number 1845—NEW1.

Of the 7,731 projected warnings to be provided to enrolled students at non-profit institutions, we estimate that 773 students (7,731 students times 10 percent) would receive the warning at a group presentation and that it would take on average 0.33 hours (20 minutes) per warning to print the warning, conduct the presentation, and answer questions about the warning to each affected student. This would increase burden by 255 hours (773 times 0.33 hours) under OMB Control Number 1845—NEW1.

Of the 7,731 projected warnings to be provided to enrolled students at non-profit institutions, we estimate that 6,185 students (7,731 students times 80 percent) would receive the warning via email and that it would take on average 0.017 hours (1 minute) per warning to send the warning to each affected student. This would increase burden by 105 hours (6,185 students times 0.017 hours) under OMB Control Number 1845y—NEW1.

Based upon 2009–2010 reported data, 276,234 students were enrolled at public institutions. Of that number of students, we estimate that 628 students would be enrolled in zone programs and 13,178 students would be enrolled in failing programs at public institutions. Thus, the total number of warnings would have to be provided to 13,806 students (628 students plus 13,178 students) enrolled in GE programs at public institutions.

Of the 13,806 projected number of warnings to be provided to enrolled students at public institutions, we estimate that 1,381 students (13,806 students times 10 percent) would receive the warning individually and that it would take on average 0.17 hours (10 minutes) per warning to print the warning, locate the student, and deliver the warning to each affected student. This would increase burden by 235 hours (13,806 students times 0.17 hours) under OMB Control Number 1845—NEW1.

Of the 13,806 projected warnings to be provided to enrolled students at public institutions, we estimate that 1,381 students (13,806 students times 10 percent) would receive the warning at a group presentation and that it would take on average 0.33 hours (20 minutes) per warning to print the warning, conduct the presentation, and answer questions about the warning to each affected student. This would increase burden by 456 hours (1,381 times 0.33 hours) under OMB Control Number 1845—NEW1.

Of the 13,806 projected warnings to be provided to enrolled students at public institutions, we estimate that 11,044 students (13,806 students times 80 percent) would receive the warning via email and that it would take on average 0.017 hours (1 minute) per warning to send the warning to each affected student. This would increase burden by 188 hours (11,044 students times 0.017 hours) under OMB Control Number 1845—NEW1.

Collectively, providing the warnings would increase burden by 75,907 hours under OMB Control Number 1845—NEW1.

Students would also be affected by the warnings. On average, given the alternatives available to institutions, we estimate that it would take each student 0.17 hours (10 minutes) to read the warning and ask any questions.

Burden would increase by 199,233 hours (1,171,956 students times 0.17 hours) for the students who would receive warnings from for-profit institutions under one of the three delivery options, under OMB Control Number 1845—NEW1.

Burden would increase by 1,314 hours (7,731 students times 0.17 hours) for the students who would receive warnings from private non-profit institutions under one of the three delivery options, under OMB Control Number 1845—NEW1.

Burden would increase by 2,347 hours (13,806 students times 0.17 hours) for the students who would receive warnings from public institutions under one of the three delivery options, under OMB Control Number 1845—NEW1.

Collectively, students reading the warning would increase burden by 202,894 hours under OMB Control Number 1845—NEW1.

Requirements: Under proposed § 668.410(a)(2), institutions must provide a written warning about a possible loss of eligibility for title IV, HEA program funds directly to prospective students prior to their signing an enrollment agreement, registering, or making any financial commitment to the institution. To the extent practicable, an institution would have to provide this warning in other languages for enrolled students for whom English is not their first language.

Burden Calculation: Most institutions would have to contact, or be contacted by, a larger number of prospective students to yield institutions' desired net enrollments. The magnitude of this activity would be different depending on the type and control of the institution, as detailed below.

We estimate that the number of prospective students that must contact or be contacted by for-profit institutions as a result of a failed program would be 6 times the number of expected enrollments. As noted above, we estimate that 1,171,956 students (327,468 students enrolled in zone programs plus 844,488 students enrolled in failing programs) would be enrolled in failing or zone programs at for-profit institutions. Therefore, for-profit institutions would be required to provide 7,031,736 warnings (1,171,956 times 6), with an estimated per student time of 0.10 hours (6 minutes) to deliver, increasing burden by 703,174 hours (7,031,736 prospective students times 0.10 hours) under OMB Control Number 1845—NEW1.

We estimate that the number of prospective students that must contact or be contacted by private non-profit institutions as a result of a failed program or zone program would be 1.8 times the number of expected enrollments. As noted above, we estimate that 7,731 students (2,308 students enrolled in zone programs plus 5,423 students enrolled in failing programs) would be enrolled in failing programs or zone programs at private non-profit institutions. Therefore, private non-profit institutions would be required to provide 13,916 warnings (7,731 students times 1.8), with an estimated per student time of 0.10 hours (6 minutes) to deliver, increasing burden by 1,392 hours (13,916 prospective students times 0.10 hours) under OMB Control Number 1845—NEW1.

We estimate that the number of prospective students that must contact or be contacted by public institutions as a result of a failed program or zone program would be 1.5 times the number of expected enrollments. As noted above we estimate that 13,806 students (628 students enrolled in zone programs plus 13,178 students enrolled in failing programs) would be enrolled in failing programs and zone programs at public institutions. Therefore, public institutions would be required to provide 20,709 warnings (13,806 students times 1.5), with an estimated per student time of 0.10 hours (6 minutes) to deliver, increasing burden by 2,071 hours (20,709 prospective students times 0.10 hours) under OMB Control Number 1845—NEW1.

Collectively, burden would increase by 706,637 hours under OMB Control Number 1845—NEW1.

The prospective students would also be affected by the warnings. On average, given the alternatives available to institutions, we estimate that it would take each student 0.08 hours (5 minutes)

to read the warning and ask any questions.

Burden would increase by 562,539 hours (7,031,736 times 0.08 hours) for the prospective students who would receive warnings from for-profit institutions, under OMB Control Number 1845—NEW1.

Burden would increase by 1,113 hours (13,916 times 0.08 hours) for the prospective students who would receive warnings from private non-profit institutions, under OMB Control Number 1845—NEW1.

Burden would increase by 1,657 hours (20,709 times 0.08 hours) for the prospective students who would receive warnings from public institutions, under OMB Control Number 1845—NEW1.

Collectively, prospective students reading the warning would increase burden by 565,309 hours under OMB Control Number 1845—NEW1.

Requirements: Under proposed § 668.410(a)(2)(ii)(B), if more than 30 days have passed from the date the initial warning is provided, the prospective student must be provided an additional warning and may not enroll until three days later. We estimate that half of the number of prospective students would not enroll within 30 days of the initial warning and therefore would require a second warning.

Burden Calculation: We estimate that 50 percent of students enrolling in a failing program do so more than 30 days after receiving the initial prospective student warning. Burden would increase by 281,269 hours for the 3,515,868 (7,031,736 prospective students times 50 percent times .08 hours) students for whom for-profit institutions would provide subsequent warnings.

Burden would increase by 557 hours for the 6,958 (13,916 prospective students times 50 percent times .08 hours) students for whom private non-profit institutions would provide subsequent warnings.

Burden would increase by 828 hours for the 10,355 (20,709 prospective students times 50 percent times .08 hours) students for whom public institutions would provide subsequent warnings.

Collectively, subsequent warning notices would increase burden by 282,654 hours under OMB Control Number 1845—NEW1.

Similarly, it would take the recipients of subsequent warnings time to read the second warning. Burden would increase by 281,269 hours for the 3,515,868 (7,031,736 prospective students times 50 percent times .08 hours) students to read the subsequent warnings from for-profit institutions, OMB Control Number 1845—NEW1.

Burden would increase by 557 hours for the 6,958 (13,916 prospective students times 50 percent times .08 hours) students to read the subsequent warnings from private non-profit institutions.

Burden would increase by 828 hours for the 10,355 (20,709 prospective students times 50 percent times .08 hours) students to read the subsequent warnings from public institutions.

Collectively, burden to students to read the subsequent warnings would increase by 282,654 hours under OMB Control Number 1845—NEW1.

The total increase in burden for § 668.410 would be 2,116,055 hours under OMB Control Number 1845—NEW1

Section 668.411 Reporting Requirements for GE Programs

Requirements: Under the proposed regulations in § 668.411, institutions would report, for each student enrolled in a GE program during an award year who received title IV, HEA program funds for enrolling in that program: (1) Information needed to identify the student and the institution the student attended; (2) the name, CIP code, credential level, and length of the GE program; (3) whether the GE program is a medical or dental program whose students are required to complete an internship or residency; (4) the date the student began initial attendance in the GE program; (5) the student's attendance dates and attendance status in the GE program during the award year; and (6) the student's enrollment status as of the first day of the student's enrollment in the GE program.

Further, if the student completed or withdrew from the GE program during the award year, the institution would report: (1) The date the student completed or withdrew; (2) the total amount the student received from private education loans for attendance in the GE program that the institution is, or should reasonably be, aware of; (3) the total amount of institutional debt the student owes any party after completing or withdrawing from the GE program; and (4) the amount for tuition and fees and books, supplies, and equipment included in the student's cost of attendance for each award year in which the student was enrolled in the GE program, or a higher amount if assessed by the institution to the student.

No later than July 31 of the year the regulations take effect, institutions would be required to report this information for the second through seventh award years prior to that date. For medical and dental programs that require an internship or residency, institutions would need to include the eighth award year prior to July 31. For all subsequent award years, institutions would report not later than October 1 following the end of the award year, unless the Secretary establishes a later date in a notice published in the **Federal Register**. The proposed regulations would give the Secretary the flexibility to identify additional reporting items, or to specify a reporting deadline later than October 1, in a notice published in the **Federal Register**.

Finally, the proposed regulations would require institutions to provide the Secretary with an explanation of why any missing information is not available.

Burden Calculation: There are 2,526 for-profit institutions that offer one or more GE programs. We estimate that, on average, it would take 6 hours for each of those institutions to modify or develop manual or automated systems for reporting under § 668.411. Therefore burden would increase for these institutions by 15,156 hours (2,526 institutions times 6 hours).

There are 318 private non-profit institutions that offer one or more GE programs. We estimate that, on average, it would take 6 hours for each of those institutions to modify or develop manual or automated systems for reporting under § 668.411. Therefore burden would increase for these institutions by 1,908 hours (318 institutions times 6 hours).

There are 1,117 public institutions that offer one or more GE programs. We estimate that, on average, it would take 6 hours for each of those institutions to modify or develop manual or automated systems for reporting under § 668.411. Therefore burden would increase for these institutions by 6,702 hours (1,117 institutions times 6 hours).

Collectively, burden to develop systems for reporting would increase by 23,766 hours (under OMB Control Number 1845—NEW1.

Requirements: Proposed § 668.411(b) requires that, by no later than July 31 of the year the regulations take effect, institutions report this information for the second through seventh award years prior to that date. For medical and dental programs that require an internship or residency, institutions would need to include the eighth award year prior to July 31.

Burden Calculation: According to our analysis of previously reported GE program enrollment data, there were 2,703,851 students enrolled in GE

programs offered by for-profit institutions during the 2009–2010 award year. Based on budget baseline estimates as provided in the general background information, we estimate that enrollment in GE programs at for-profit institutions for 2008–2009 was 2,219,280. Going forward, we estimate that enrollment in GE programs at for-profit institutions for 2010–2011 was 2,951,154, for 2011–2012 enrollment was 2,669,084, for 2012–2013 enrollment was 2,426,249, and for 2013–2014 enrollment would be 2,227,230. This results in a total of 15,196,848.

We estimate that on average, the reporting of GE program information by for-profit institutions would take 0.03 hours (2 minutes) per student as we anticipate that, for most for-profit institutions, reporting would be an automated process. Therefore, GE reporting by for-profit institutions would increase burden by 455,905 hours (15,196,848 students times .03 hours) in OMB Control Number 1845—NEW1.

According to our analysis of previously reported GE program enrollment data, there were 57,700 students enrolled in GE programs offered by private non-profit institutions during the 2009–2010 award year. Based on budget baseline estimates as provided in the general background information, we estimate that enrollment in GE programs at private non-profit institutions for 2008–2009 was 49,316. Going forward, we estimate that enrollment in GE programs at private non-profit institutions for 2010–2011 was 67,509, for 2011–2012 was 73,585, for 2012–2013 was 70,641, and for 2013–2014 would be 65,697. This results in a total of 384,448.

We estimate that on average, the reporting of GE program information by private non-profit institutions would take 0.03 hours (2 minutes) per student as we anticipate that, for most private non-profit institutions, reporting would be an automated process. Therefore, GE reporting by private non-profit institutions would increase burden by 11,533 hours (384,448 students times .03 hours) in OMB Control Number 1845—NEW1.

According to our analysis of previously reported GE program enrollment data, there were 276,234 students enrolled in GE programs offered by public institutions during the 2009–2010 award year. Based on budget baseline estimates as provided in the general background information, we estimate that enrollment in GE programs at public institutions for 2008–2009 was 236,097. Going forward, we estimate that enrollment in GE programs at public institutions for 2010–2011 was 323,194, for 2011–2012 was 352,281, for 2012–2013 was 338,190, and for 2013–2014 would be 314,517. This results in a total of 1,840,513.

We estimate that on average, the reporting of GE program information by public institutions would take 0.03 hours (2 minutes) per student as we anticipate that, for most public institutions, reporting would be an automated process. Therefore, GE reporting by public institutions would increase burden by 55,215 hours (1,840,513 students times .03 hours) in OMB Control Number 1845—NEW1.

Collectively, we estimate that burden upon institutions to meet the initial reporting requirements under proposed § 668.411 would increase burden by 522,653 hours in OMB Control Number 1845—NEW1.

The total increase in burden for § 668.411 would be 546,419 hours under OMB Control Number 1845—NEW1.

Section 668.412 Disclosure Requirements for GE Programs

Requirements: The proposed § 668.412 would expand the number of items that we may require an institution to disclose and increase the Department's flexibility to tailor the disclosure in a way that would be most useful to students and minimize burden to institutions.

These disclosure items could include:

(1) The primary occupations (by name and SOC code) that the GE program prepares students to enter, along with links to the corresponding occupational profiles on O*Net;

(2) the GE program's completion and withdrawal rates;

(3) the length of the program;

(4) the number of clock or credit hours, as applicable, in the program;

(5) the total number of students enrolled in the program during the most recently completed award year;

(6) the loan repayment rate for any one or all of the following groups: All students who attended the program, students who completed the program, or students who withdrew from the program;

(7) the total cost of tuition and fees, books, supplies, and equipment that students would incur for completing the program within the length of the program;

(8) the placement rate for the program, if the institution is required to calculate a placement rate by its accrediting agency or State;

(9) of the individuals enrolled in the program during the most recently completed award year, the percentage who incurred debt for enrollment in the program;

(10) as provided by the Secretary, the median loan debt incurred by any or all of the following groups: Students who completed the program during the most recently completed award year, students who withdrew from the program during the most recently completed award year, or both those groups of students;

(11) the median earnings of any one or all of the following groups: Students who completed the program during the two-year period used to calculate the most recent D/E rates for the program, students who were in withdrawn status at the end of the two-year period used to calculate the most recent D/E rates for the program, or all of the students who completed during the two-year period used to calculate the most recent D/E rates and students who were in withdrawn status at the end of that two-year period;

(12) the pCDR for the most recently completed fiscal year;

(13) the most recent annual earnings rate as calculated by the Secretary under proposed § 668.404;

(14) if applicable, whether completion of the program satisfies the educational prerequisites for professional licensure in the State in which the program is offered and in any other State included in the institution's Metropolitan Statistical Area (MSA) (according to the OMB guidelines);

(15) if applicable, the programmatic accreditation required by the applicable State, or States, for an individual to obtain employment in the occupation for which the program prepares a student; and

(16) a link to the College Navigator Web site.

The Secretary would conduct consumer testing to determine how to make the disclosures as meaningful as possible. After we have the results of the consumer testing, each year the Secretary would identify which of these items institutions must include in their disclosures, along with any other information that must be included, and publish those requirements in a notice in the **Federal Register**.

Institutions must update their GE program disclosure information annually. They must make it available in their promotional materials and make it available on any Web page containing academic, cost, financial aid, or admissions information about a GE program.

Burden Calculation: We estimate that of the 37,589 GE programs that reported enrollments in the past, 12,250 programs would be offered by for-profit institutions. We estimate that, annually,

the amount of time it would take to collect the data from institutional records, from information provided by the Secretary, and from the institution's accreditor or State, and the amount of time it would take to ensure that promotional materials either include the disclosure information or provide a Web address or direct link to the information would be, on average, 4 hours per program. Additionally, we estimate that revising the institution's Web pages used to disseminate academic, cost, financial aid, or admissions information to also contain the disclosure information about the program would, on average, increase burden by an additional 1 hour per program. Therefore, burden would increase by 5 hours per program for a total of 61,250 hours of increased burden in OMB Control Number 1845—NEW1 (12,250 programs times 5 hours per program).

We estimate that of the 37,589 GE programs that reported enrollments in the past, 2,343 programs would be offered by private non-profit institutions. We estimate that, annually, the amount of time it would take to collect the data from institutional records, from information provided by the Secretary, and from the institution's accreditor or State, and the amount of time it would take to ensure that promotional materials either include the disclosure information or provide a Web address or direct link to the information would be, on average, 4 hours per program. Additionally, we estimate that revising the institution's Web pages used to disseminate academic, cost, financial aid, or admissions information about the program to also contain the disclosure information would, on average, increase burden by an additional 1 hour per program. Therefore, burden would increase by 5 hours per program for a total of 11,715 hours of increased burden in OMB Control Number 1845—NEW1 (2,343 programs times 5 hours per program).

We estimate that of the 37,589 GE programs that reported enrollments in the past, 22,996 programs would be offered by public institutions. We estimate that the amount of time it would take to collect the data from institutional records, from information provided by the Secretary, and from the institution's accreditor or State, and the amount of time it would take to ensure that promotional materials either include the disclosure information or provide a Web address or direct link to the information would be, on average, 4 hours per program. Additionally, we estimate that revising the institution's Web pages used to disseminate academic, cost, financial aid, or admissions information about the program to also contain the disclosure information would, on average, increase burden by an additional 1 hour per program. Therefore, on average, burden would increase by 5 hours per program for a total of 114,980 hours of increased burden in OMB Control Number 1845—NEW1 (22,996 programs times 5 hours per program).

Collectively, we estimate that burden would increase by 187,945 hours in OMB Control Number 1845—NEW1.

Under proposed § 668.412(e), an institution must provide, as a separate document, a copy of the disclosure information to a prospective student. Before a prospective student signs an enrollment agreement, completes registration at, or makes a financial commitment to the institution, the institution must obtain written confirmation from the prospective student that he or she received the copy of the disclosure information.

We estimate that the enrollment in the 12,250 GE programs offered by for-profit institutions for 2013–2014 is 2,227,230. As noted earlier, most institutions would have to contact, or be contacted by, a larger number of prospective students to yield institutions' desired net enrollments.

We estimate that the number of prospective students that must contact or be contacted by for-profit institutions as a result of a failed program would be 6 times the number of expected enrollment. As noted above, we estimate that 13,363,380 (2,227,230 students for 2013–2014 times 6) students would be enrolled in GE programs at for-profit institutions. Therefore, for-profit institutions would be required to provide 13,363,380 disclosures to prospective students. On average, we estimate that it would take institutional staff 0.03 hours (2 minutes) per prospective student to provide a copy of the disclosure information. We also estimate that, on average, it would take institutional staff 0.10 hours (6 minutes) to obtain written confirmation and answer any questions from each prospective student. Therefore we estimate that the total burden associated with providing the disclosure information and obtaining written confirmation by for-profit institutions would be 0.13 hours (8 minutes) per prospective student. Burden would increase by 1,737,239 hours for for-profit institutions (13,363,380 prospective students times 0.13 hours) under OMB Control Number 1845—NEW1.

We estimate that the burden on each prospective student would be 0.08 hours (5 minutes) to read the disclosure information and provide written confirmation of receipt. Burden would increase by 1,069,070 hours for prospective students at for-profit institutions (13,363,380 prospective students times 0.08 hours) under OMB Control Number 184—NEW1.

We estimate that the enrollment in the 2,343 GE programs offered by private non-profit institutions for 2013–2014 is 65,697. As noted earlier, most institutions would have to contact, or be contacted by, a larger number of prospective students to yield their enrollments.

We estimate that the number of prospective students that must contact or be contacted by private non-profit institutions as a result of a failed program would be 1.8 times the number of expected enrollment. As noted above we estimate that 65,697 students would be enrolled in GE programs at private non-profit institutions. Therefore, private non-profit institutions would be required to provide 118,255 disclosures (65,697 times 1.8) to prospective students. On average, we estimate that it would take institutional staff 0.03 hours (2 minutes) per prospective student to provide a copy of the disclosure information. We also estimate that, on average, it would take institutional staff 0.10 hours (6 minutes) to obtain written confirmation and answer any questions from each prospective student. Therefore we estimate that the total burden associated with providing the disclosure information and obtaining written confirmation by private-non-profit institutions would be 0.13 hours (8 minutes) per prospective student. Burden would increase by 15,373 hours for private non-profit institutions (118,255 prospective students times 0.13 hours) under OMB Control Number 1845—NEW1.

We estimate that the burden on each prospective student would be 0.08 hours (5 minutes) to read the disclosure information and provide written confirmation of receipt. Burden would increase by 9,460 hours for prospective students at private non-profit institutions (118,255 prospective students times 0.08 hours) under OMB Control Number 184—NEW1.

We estimate that the enrollment in the 22,996 GE programs offered by public institutions for 2013–2014 is 314,517. As noted earlier, most institutions would have to contact, or be contacted by, a larger number of prospective students to yield their enrollments.

We estimate that the number of prospective students that must contact or be contacted by public institutions as a result of a failed program would be 1.5

times the number of expected enrollment. As noted above we estimate that 314,517 students would be enrolled in GE programs at public institutions. Therefore, public institutions would be required to provide 471,776 disclosures (314,517 times 1.5) to prospective students. On average, we estimate that it would take institutional staff 0.03 hours (2 minutes) per prospective student to provide a copy of the disclosure information. We also estimate that, on average, it would take institutional staff 0.10 hours (6 minutes) to obtain written confirmation and answer any questions from each prospective student. Therefore we estimate that the total burden associated with providing the disclosure information and obtaining written confirmation by public institutions would be 0.13 hours (8 minutes) per prospective student. Burden would increase by 61,331 hours for public institutions (471,776 prospective students times 0.13 hours) under OMB Control Number 1845—NEW1.

We estimate that the burden on each prospective student would be 0.08 hours (5 minutes) to read the disclosure information and provide written confirmation of receipt. Burden would increase by 37,742 hours for prospective students at public institutions (471,776 prospective students times 0.08 hours) under OMB Control Number 1845—NEW1.

Collectively, burden would increase by 2,930,215 hours under OMB Control Number 1845—NEW1.

The total increase in burden for § 668.412 would be 3,118,160 hours under OMB Control Number 1845—NEW1.

Section 668.413 Calculating, Issuing, and Challenging Completion Rates, Withdrawal Rates, Repayment Rates, Median Loan Debt, and Median Earnings

Requirements: As discussed in connection with proposed § 668.412, an institution would be required to disclose, among other information, completion and withdrawal rates, repayment rates, and median loan debt and median earnings for a GE program. Using the procedures proposed in § 668.413 and based partially on the information that an institution would report under proposed § 668.411, the Secretary would calculate and make available to the institution for disclosure: Completion rates, withdrawal rates, repayment rates, median loan debt, and median earnings for a GE program.

An institution would have an opportunity to correct the list of students who completed a GE program and the list of students who withdrew from a GE program prior to the Secretary sending the lists to SSA for earnings information.

For the median earnings calculation under proposed § 668.413(b)(8), (b)(9), and (b)(10), after the Secretary provides a list of the relevant students (those who completed and those who withdrew) to the institution, the institution may provide evidence showing that a student should be included on the list or removed from the list as a result of meeting the definitions of an exclusion under proposed § 668.413(b)(11). The institution may also correct or update a student's identity information or attendance information on the listing.

Burden Calculation: For the 12,250 for-profit institutions, we estimate, on average, that it would take institutional staff 2 hours to review each of the two lists to determine whether a student should be included or excluded under proposed § 668.404(e) and, if included, whether the student's identity information or attendance information requires correction, and then to obtain the evidence to substantiate any inclusion, exclusion, or correction. Burden would increase by 49,000 hours (12,250 programs times 2 lists times 2 hours) under OMB Control Number 184—NEW1.

For the 2,343 private non-profit institutions, we estimate, on average, that it would take institutional staff 2 hours to review each of the two lists to determine whether a student should be included or excluded under proposed § 668.404(e) and, if included, whether the student's identity information or attendance information requires correction, and then to obtain the evidence to substantiate any inclusion, exclusion, or correction. Burden would increase by 9,372 hours (2,343 programs times 2 lists times 2 hours) under OMB Control Number 184—NEW1.

For the 22,996 private public institutions, we estimate, on average, that it would take institutional staff 2 hours to review each of the two lists to determine whether a student should be included or excluded under proposed § 668.404(e) and, if included, whether the student's identity information or attendance information requires correction, and then to obtain the evidence to substantiate any inclusion, exclusion, or correction. Burden would increase by 91,984 hours (22,996 programs times 2 lists times 2 hours) under OMB Control Number 184—NEW1.

Collectively, burden would increase by 150,356 hours under OMB Control Number 1845—NEW1.

Under proposed § 668.413(d)(1), an institution may challenge the Secretary's calculation of the draft completion rates, withdrawal rates, repayment rates, and median loan debt.

The Secretary would develop the completion rates, withdrawal rates, repayment rates, and median loan debt lists for each of the estimated 12,250 GE programs at for-profit institutions. For the purpose of challenging the completion, withdrawal, and repayment rates and median loan debt we estimate that, on average, it would take institutional staff 20 hours per program to review all five of the lists (full-time students for completion rates, part-time students for completion rates, students who withdrew, students who entered repayment for the repayment rate, and students included in the median loan debt calculation), compare the data to institutional records, and determine whether there are student records that must be included or excluded under § 668.413(b)(8). Therefore, burden would increase by 245,000 hours (12,250 programs times 20 hours for five lists) under OMB Control Number 1845—NEW1.

The Secretary would develop the completion rates, withdrawal rates, repayment rates, and median loan debt lists for each of the estimated 2,343 GE programs at private non-profit institutions. For the purpose of challenging the completion, withdrawal, and repayment rates and median loan debt we estimate that, on average, it would take institutional staff 20 hours per program to review all five of the lists (full-time students for completion rates, part-time students for completion rates, students who withdrew, students who entered repayment for the repayment rate, and students included in the median loan debt calculation), compare the data to institutional records, and determine whether there are student records that must be included or excluded under § 668.413(b)(8). Therefore, burden would increase by 46,860 hours (2,343 programs times 20 hours for five lists) under OMB Control Number 1845—NEW1.

The Secretary would develop the completion rates, withdrawal rates, repayment rates, and median loan debt lists for each of the estimated 22,996 GE programs at public institutions. For the purpose of challenging the completion, withdrawal, and repayment rates and median loan debt we estimate that, on average, it would take institutional staff 20 hours per program to review all five of the lists (full-time students for completion rates, part-time students for completion rates, students who withdrew, students who entered

repayment for the repayment rate, and students included in the median loan debt calculation), compare the data to institutional records, and determine whether there are student records that must be included or excluded under § 668.413(b)(8). Therefore, burden would increase by 459,920 hours (22,996 times 20 hours) under OMB Control Number 1845—NEW1.

Collectively, burden would increase by 751,780 under OMB Control Number 1845—NEW1.

The total increase in burden for § 668.413 would be 902,136 under OMB Control Number 1845—NEW1

Section 668.414 Certification Requirements for GE Programs

Requirements: Under proposed § 668.414(a) each institution participating in the title IV, HEA programs would be required to provide a ''transitional certification'' to supplement its current program participation agreement (PPA). The transitional certification would be submitted no later than December 31 of the year in which the proposed regulations take effect. The transitional certification would be signed by the institution's most senior executive officer and apply to all of the institution's GE programs eligible for title IV, HEA program funds. Under proposed § 668.414(d), the certification would provide that each GE program meets certain requirements (PPA certification requirements), specifically that each GE program is:

- Approved by a recognized accrediting agency, is included in the institution's accreditation, or is approved by a recognized State agency for the approval of public postsecondary vocational education in lieu of accreditation;
- Programmatically accredited, if required by a Federal governmental entity in the State in which the institution is located or by any State within the institution's MSA; and
- Satisfies licensure or certification requirements in the State where the institution is located and in all other States within the institution's MSA so that a student who completes the program and seeks employment in those States qualifies to take any licensure or certification exam that is needed for the student to practice or find employment in the occupation that the program prepares students to enter.

Under proposed § 668.414(b) an institution would be required to certify each time it executes a new PPA that any GE programs it offers meet the PPA certification requirements.

Burden Calculation: We estimate that it would take the 2,526 for-profit institutions that offer GE programs 0.5 hours to draft a certification statement and obtain the signature of the institution's senior executive for submission to the Department. This would increase burden by 1,263 hours under OMB Control Number 1845—NEW1 (2,526 institutions times 0.5 hours).

We estimate that it would take the 318 private non-profit institutions that offer GE programs 0.5 hours to draft a certification statement and obtain the signature of the institution's senior executive for submission to the Department. This would increase burden by 159 hours under OMB Control Number 1845—NEW1 (318 institutions times 0.5 hours).

We estimate that it would take the 1,117 public institutions that offer GE programs 0.5 hours to draft a certification statement and obtain the signature of the institution's senior executive for submission to the Department. This would increase burden by 559 hours under OMB Control Number 1845—NEW1 (1,117 institutions times 0.5 hours).

The total increase in burden for § 668.414 would be 1,981 hours under OMB Control Number 1845—NEW1.

Subpart R—Program Cohort Default Rates

Requirements: Under proposed subpart R, the Secretary would calculate a GE program's cohort default rate using a structure that would generally mirror the structure of the institutional cohort default rate (iCDR) regulations in subpart N of part 668 of the regulations. Thus, depending on the pCDR of a program, an institution would have the opportunity to submit a challenge, request an adjustment, or appeal the pCDR. Detailed information about each of these opportunities and our burden assessments follow. Common to all requests for challenges, adjustments, or appeals is that institutions would receive a loan record detail report (LRDR) provided by the Department.

Burden Calculation: As noted in the preamble discussion in ''§ 668.408 Issuing and Challenging pCDR,'' the proposed pCDR regulations in subpart R would generally mirror the structure of the institutional cohort default rate (iCDR) regulations in subpart N of part 668 of the regulations. However, because subpart R is specific to GE programs the consequences of a GE program's pCDR are different than are for iCDRs under the iCDR regulations in subpart N. For this reason (pCDR not the same as iCDR) the burden assessments that follow recognize that institutions will have the option of submitting challenges, requests for adjustments, and certain appeals for all of their GE programs in every year for which we calculate a pCDR, but will in all likelihood exercise those rights only in those instances in which we calculate a failing (or close to failing) pCDR rate for the second or third consecutive year. For purposes of our burden assessments, we consider a close to failing pCDR to be one that is between 20 percent and 29.9 percent.

Of the 6,815 GE programs that we estimate would be evaluated for pCDR, we estimate that 943 programs would be failing programs (pCDR of 30 percent or more) and therefore have the highest likelihood of having pCDR challenges, adjustments, or appeals. In addition, we considered that half of the 1,840 GE programs with a pCDR rate of 20 percent to 29.9 percent would also make challenges, request adjustments, or submit appeals, adding another 920 programs to the 943 that failed for a total of 1,863 programs. We estimate that 92 percent of the 1,863 would be GE programs at for-profit institutions, 3 percent would be GE programs at private non-profit institutions, and 5 percent would be GE programs at public institutions.

We used an analysis of the FY 2011 institutional CDR data to estimate the percentage of the possible 1,863 programs where a challenge, adjustment request, or appeal may be submitted. Those percentages varied by the type of challenge, adjustment, or appeal, as indicated in each of the regulatory sections that follow and are used to project the distribution of pCDR challenges, adjustments, and appeals.

Section 668.504 Draft Cohort Program Default Rates and Your Ability To Challenge Before Official Program Cohort Default Rates Are Issued

Requirements:

Incorrect Data Challenges: Under proposed 668.504(b), the institution may challenge the accuracy of the data included on the LRDR by sending an incorrect data challenge to the relevant data manager(s) within 45 days of receipt of the LRDR from the Department. The challenge would include a description of the information in the LRDR that the institution believes is incorrect along with supporting documentation.

Burden Calculation: Based upon FY 2011 submissions, there were 353 institutional CDR challenges for incorrect data of a total of 510 challenges, requests for adjustments, and appeals, a 69 percent submission

rate. Therefore 69 percent of the projected 1,863 challenges, adjustments, and appeals, or 1,285, are projected to be challenges for incorrect data.

Based on data provided earlier, we estimate that out of the likely 1,285 submissions, 1,182 (92 percent) would be from for-profit institutions. We estimate that the average institutional staff time needed to review a GE program's LRDR for each of these 1,182 programs and to gather and prepare incorrect data challenges would be 4 hours (1.5 hours for list review and 2.5 hours for documentation submission). This would increase burden by 4,728 hours.

Based on data provided earlier, we estimate that out of the likely 1,285 submissions, 39 (3 percent) would be from private non-profit institutions. We estimate that the average institutional staff time needed to review a GE program's LRDR for each of these 39 programs and to gather and prepare the challenges would be 4 hours (1.5 hours for list review and 2.5 hours for documentation submission). This would increase burden by 156 hours.

Based on data provided earlier, we estimate that, out of the likely 1,285 submissions, 64 (5 percent) would be from public institutions. We estimate that the average institutional staff time needed to review a GE program's LRDR for each of these 64 programs and to gather and prepare the challenges would be 4 hours (1.5 hours for list review and 2.5 hours for documentation submission). This would increase burden by 256 hours.

Collectively, this would increase burden by 5,140 hours under OMB Control Number NEW3.

Participation Rate Index Challenges: Under proposed 668.504(c), institutions may challenge a program's anticipated loss of title IV, HEA program eligibility, if the institution's participation rate would be equal to or less than 0.0625 for any of the three pCDR fiscal years that where the pCDR is 30 percent or greater. A participation rate index challenge (and a participation rate index appeal for final rates, discussed below) could be submitted if the number of students who received title IV, HEA program loans during a one-year period was only a small percentage of those who were eligible to borrow.

Burden Calculation: Based upon FY 2011 submissions, there were 2 participation rate index challenges of the total 510 challenges, requests for adjustments, and appeals 0.4 percent. Therefore we project that there will be 4 participation rate challenges (0.4 percent of the projected 943 challenges, adjustments, and appeals). Note that we use 943 and not 1,863 because that number includes 920 programs with rates between 20.0 percent and 29.9 percent and only programs subject to loss of eligibility can submit a participation rate index challenge. Further, based upon GE program distribution percentages, we project that all 4 participation rate index challenges would be from for-profit institutions. Therefore, all of the estimated burden below would be to for-profit institutions and none to private non-profit or public institutions.

On average, we estimate that gathering and submitting the information for each participation rate challenge would take 2.0 hours per submission. Therefore, burden would increase by 8 hours (4 participation rate index challenges times 2 hours per submission) under OMB Control Number 1845—NEW3.

The total increase in burden for § 668.504 would be 5,148 hours under OMB Control Number 1845—NEW3.

Section 668.509 Uncorrected Data Adjustments

Requirements: An institution may request an uncorrected data adjustment for the most recent cohort of borrowers used to calculate a GE program's most recent official pCDR, if in response to the institution's incorrect data challenge, a data manager agreed to change data but the changes were not reflected in the official pCDR.

Burden Calculation: Based upon FY 2011 submissions, there were 116 uncorrected data adjustments of the total 510 challenges, requests for adjustments, and appeals. Therefore, 23 percent of the projected 943 challenges, adjustments, and appeals (based on possible loss of eligibility) or 217 are projected to be uncorrected data adjustments. We estimate that the average institutional staff time needed is 1 hour for list review and 0.5 hours for documentation submission, for a total of 1.5 hours.

We estimate that 200 (92 percent) of the 217 projected uncorrected data adjustments will be from for-profit institutions. Therefore, burden would increase at for-profit institutions by 300 hours (200 adjustments times 1.5 hours) under OMB Control Number 1845—NEW3.

We estimate that 6 (3 percent) of the 217 projected uncorrected data adjustments would be from private non-profit institutions. Therefore, burden would increase at private non-profit institutions by 9 hours (6 adjustments times 1.5 hours) under OMB Control Number 1845—NEW3.

We estimate that 11 (5 percent) of the 217 projected uncorrected data adjustments would be from public institutions. Therefore, burden would increase at public institutions by 17 hours (11 adjustments times 1.5 hours) under OMB Control Number 1845—NEW3.

The total increase in burden for § 668.509 would be 326 hours under OMB Control Number 1845—NEW3.

Section 668.510 New Data Adjustments

Requirements: An institution could request a new data adjustment for the most recent cohort of borrowers used to calculate the most recent official pCDR for a GE program, if a comparison of the LRDR for the draft rates and the LRDR for the official rates show that data have been newly included, excluded, or otherwise changed and the errors are confirmed by the data manager.

Burden Calculation: Based upon FY 2011 submissions, there were 12 new data adjustments of the total 510 challenges, requests for adjustments, and appeals. Therefore, 2 percent of the projected 943 challenges, adjustments, and appeals (based on possible sanction) or 19 are projected to be new data adjustments. We estimate that the average institutional staff time needed is 3 hours for list review and 1 hour for documentation submission, for a total of 4 hours.

We estimate that 17 (92 percent) of the 19 projected new data adjustments would be from for-profit institutions. Therefore, burden would increase at for-profit institutions by 68 hours (17 adjustments times 4 hours) under OMB Control Number 1845—NEW3.

We estimate that 1 (3 percent) of the 19 projected new data adjustments would be from private non-profit institutions. Therefore, burden would increase at private non-profit institutions by 4 hours (1 adjustment times 4 hours) under OMB Control Number 1845—NEW3.

We estimate that 1 (5 percent) of the 19 projected new data adjustments would be from public institutions. Therefore, burden would increase at public institutions by 4 hours under (1 adjustment times 4 hours) OMB Control Number 1845—NEW3.

The total increase in burden for § 668.510 would be 76 hours under OMB Control Number 1845—NEW3.

Section 668.511 Erroneous Data Appeals

Requirements: An institution could appeal the calculation of a pCDR upon which a sanction under § 668.410 would be based. The institution could do so if

it disputes the accuracy of data that was previously challenged under § 668.504(b) (challenge for incorrect data); if a comparison of the LRDR that we provided for the draft rate and the official rate shows that data have been newly included, excluded, or otherwise changed; or if the institution disputes the accuracy of that data. The institution must send a request for verification of data to the applicable data manager(s) within 15 days of receipt of the notice of sanction or provisional certification, and it must include a description of the incorrect information and all supporting documentation.

Burden Calculation: Based upon the fact that in FY 2011 there were no institutional CDR erroneous data appeals, we have no basis to establish erroneous data appeals burden for pCDRs.

Section 668.512 Loan Servicing Appeals

Requirements: An institution could appeal the calculation of a pCDR on the basis of improper loan servicing or collection only if the borrower did not make a payment on the loan and the institution can prove that the servicer failed to perform required loan servicing or collections activities.

Burden Calculation: Based upon FY 2011 submissions, there were 19 loan servicing appeals of the total 510 challenges, requests for adjustments, and appeals. Therefore, 4 percent or 38 of the projected 943 challenges, adjustments, and appeals are projected to be loan servicing appeals. We estimate that, on average, to gather, analyze, and submit the necessary documentation, each appeal would take 3 hours.

We estimate that 35 (92 percent) of the 38 projected loan servicing appeals would be from for-profit institutions. Therefore, burden would increase at for-profit institutions by 105 hours (35 servicing appeals times 3 hours) under OMB Control Number 1845—NEW3.

We estimate that 1 (3 percent) of the 38 projected loan servicing appeals would be from private non-profit institutions. Therefore, burden would increase at private non-profit institutions by 3 hours (1 servicing appeal times 3 hours) under OMB Control Number 1845—NEW3.

We estimate that 2 (5 percent) of the 38 projected loan servicing appeals would be from public institutions. Therefore, burden would increase at public institutions by 6 hours (2 servicing appeals times 3 hours) under OMB Control Number 1845—NEW3.

The total increase in burden for § 668.512 would be 114 hours under OMB Control Number 1845—NEW3.

Section 668.513 Economically Disadvantaged Appeals

Requirements: An institution could appeal a notice of a sanction under § 668.410 or a notice of a second successive official pCDR that is equal to or greater than 30 percent if an independent auditor certifies that the low income rate for the GE program is two-thirds or more and the program is a degree program with a completion rate of 70 percent or more or, if the program is not a degree program, its placement rate is 44 percent or more.

Burden Calculation: Based upon FY 2011 submissions, there were 6 economically disadvantaged appeals of the total 510 challenges, requests for adjustments, and appeals. Therefore 9 (1 percent) of the projected 943 challenges, adjustments, and appeals are projected to be economically disadvantaged appeals. We estimate that preparing and submitting an economically disadvantaged appeal would take an institution 5 hours for each program.

We estimate that 8 (92 percent) of the 9 projected economically disadvantaged appeals would be from for-profit institutions. Therefore, burden would increase at for-profit institutions by 40 hours (8 programs times 5 hours) under OMB Control Number 1845—NEW3.

We do not project any economically disadvantaged appeals from the private non-profit institutions.

We estimate that 1 (5 percent) of the 9 projected economically disadvantaged appeals would be from public institutions. Therefore, burden would increase at public institutions by 5 hours (1 program times 5 hours) under OMB Control Number 1845—NEW3.

The total increase in burden for § 668.513 would be 45 hours under OMB Control Number 1845—NEW3.

Section 668.514 Participation Rate Index Appeals

Requirements: An institution could appeal a notice of a program's loss of title IV, HEA program eligibility under § 668.410 based upon two pCDRs of 30 percent or greater if the participation rate index for that GE program is equal to or less than 0.0625 for any of those three program cohort's fiscal years. A participation rate index appeal (and a participation rate index challenge for draft rates, discussed above) could be submitted if the number of students who received title IV, HEA program loans during a one-year period was only a small percentage of those who were eligible to borrow.

Burden Calculation: Based upon FY 2011 submissions, there were 2 participation rate index appeals of the total 510 challenges, requests for adjustments, and appeals. Therefore 0.4 percent of the projected 943 challenges, adjustments, and appeals or 4 are projected to be participation rate index appeals. On average, we estimate that gathering and submitting the information for each appeal would take 2 hours per submission.

We estimate that all 4 projected participation rate index appeals would be from for-profit institutions. Therefore, the total increase in burden for § 668.514 would be 8 hours (4 participation rate index appeals times 2 hours) under OMB Control Number 1845—NEW3.

Section 668.515 Average Rates Appeals

Requirements: Before notifying the institution of the official pCDR for a GE program, we would make an initial determination about whether the GE program qualifies for an average rates appeal. An average rates appeal would be allowed if the number of borrowers who entered repayment in the cohort period is less than 30. In such cases, the program's pCDR is calculated based on the total of the program's former students who entered repayment in the cohort year and in the two previous cohort years.

If we determine that the GE program qualifies, we would notify the institution of that determination at the same time that we notify the institution of the official pCDR. A GE program would not be subject to a sanction under § 668.410 if we determine that the GE program meets the requirements for an average rates appeal.

If the institution disagrees with our initial determination, that is, the institution wants the program to be made ineligible or subject to sanction and not be granted the appeal, the institution would send the Department notification. No institutions have ever rejected our provision of this appeal. Therefore, there is no burden associated with average rates appeals.

Section 668.516 Thirty-or-fewer Borrowers Appeals

Requirements: An institution could appeal a notice of sanction of a GE program under § 668.410 if the total number of borrowers who comprise the pCDR cohorts for the three years at issue was 30 or fewer borrowers.

Before notifying the institution of the official pCDR, we would make an initial determination about whether the GE program qualifies for a thirty-or-fewer

borrowers appeal. A GE program would not become subject to a sanction under § 668.410 if we determine that the GE program meets the requirements for a thirty-or-fewer borrowers appeal. If we determine that the program qualifies, we would notify the institution of that determination at the same time that we notify the institution of the official pCDR. If the institution disagrees with our initial determination, that is, the institution wants the program to be subject to sanction and not granted the appeal, the institution would send the Department notification. No institution has ever rejected our provision of this appeal; therefore there is no burden associated with this appeal.

Consistent with the discussion above, the following chart describes the sections of the proposed regulations involving information collections, the information being collected, and the collections that the Department will submit to OMB for approval and public comment under the PRA, and the estimated costs associated with the information collections. The monetized net costs of the increased burden on institutions and borrowers, using wage data developed using BLS data, available at *www.bls.gov/ncs/ect/sp/ecsuphst.pdf*, is $209,859,517, as shown in the chart below. This cost was based on an hourly rate of $36.55 for institutions and $16.30 for students.

Collection of Information

Regulatory section	Information collection	OMB control No. and estimated burden [change in burden]	Estimated costs
668.405—Issuing and challenging D/E rates.	The proposed regulations would provide institutions an opportunity to correct information about students who have completed their programs and who are on the list provided by the Department to the institution.	OMB 1845—NEW1 This would be a new collection. We estimate that the burden would increase by 222,820 hours.	$8,144,071
668.406—D/E rates alternate earnings appeals and showings of mitigating circumstances.	The proposed regulations would allow institutions to make an alternate earnings appeal to the D/E rates, or a showing of mitigating circumstances, when the final D/E rates are failing or in the zone under the D/E rates measure.	OMB 1845—NEW2 This would be a new collection. We estimate that the burden would increase by 29,089 hours.	1,063,203
668.410—Consequences of GE measures.	The proposed regulations would provide that for any year the Secretary notifies the institution that a GE program could become ineligible based on a final GE measure for the next award or fiscal year the institution must provide written warnings.	OMB 1845—NEW1 This would be a new collection. We estimate that the burden for institutions would increase by 1,065,198 hours. We estimate that the burden would increase for individuals by 1,050,857 hours.	56,061,956
668.411—Reporting requirement for GE programs.	The proposed regulations would require information the institution must report to the Department about students in GE programs.	OMB 1845—NEW1 This would be a new collection. We estimate that the burden would increase by 546,419 hours.	19,971,614
668.412—Disclosure requirement for GE programs.	The proposed regulations would require certain information about GE programs to be disclosed by institutions to enrolled and prospective students.	OMB 1845—NEW1 This would be a new collection. We estimate that the burden for institutions would increase by 2,001,898 hours. We estimate that the burden for individuals would increase by 1,116,272 hours.	91,364,240
668.413—Calculating, issuing, and challenging completion rates, withdrawal rates, repayment rates, median loan debt, and median earnings.	The proposed regulations allow institutions to challenge the rates and median earnings calculated by the Department.	OMB 1845—NEW1 This would be a new collection. We estimate that the burden would increase by 902,136 hours.	32,973,071
668.414—Certification and application requirement for GE programs.	The proposed regulations would add a requirement that institutions certify that GE programs it offers are approved or accredited by an accrediting agency or the State.	OMB 1845—NEW1 This would be a new collection. We estimate that the burden would increase by 1,981 hours.	72,406
668.504—Draft program cohort default rates and challenges.	The proposed regulations would allow an institution to challenge the draft program cohort default rates.	OMB 1845—NEW3 This would be a new collection. We estimate that the burden would increase by 5,148 hours.	188,159
668.509—Uncorrected data adjustments.	The proposed regulations would allow institutions to request a data adjustment when agreed-upon data changes were not reflected in the official program cohort default rate.	OMB 1845—NEW3 This would be a new collection. We estimate that the burden would increase by 326 hours.	11,915
668.510—New data adjustments	The proposed regulations would allow an institution to request a new data adjustment if a comparison of the draft and final LRDR show that data have been included, excluded, or otherwise changed and the errors are confirmed by the data manager.	OMB 1845—NEW3 This would be a new collection. We estimate that the burden would increase by 76 hours.	2,778
668.511—Erroneous data appeals ..	The proposed regulations allow an institution to appeal the program cohort default rate calculation when the accuracy was previously challenged on the basis of incorrect data.	OMB 1845—NEW3 This would be a new collection. We estimate that the burden would increase by 0 hours.	0

Regulatory section	Information collection	OMB control No. and estimated burden [change in burden]	Estimated costs
668.512—Loan Servicing Appeals ..	The proposed regulations allow an institution to appeal on the basis of improper loan servicing or collection where the institution can prove that the servicer failed to perform required servicing or collections activities.	OMB 1845—NEW3 This would be a new collection. We estimate that the burden would increase by 114 hours.	4,167
668.513—Economically disadvantaged appeals.	The proposed regulations would allow institutions to appeal a notice of ineligibility based upon an auditors certification that the GE program has a low income rate, a high completion rate, and a placement rate of 44 percent or more.	OMB 1845—NEW3 This would be a new collection. We estimate that the burden would increase by 45 hours.	1,645
668.514—Participation rate index appeals.	The proposed regulations would allow institutions to appeal loss of eligibility if the participation rate was less than 0.0625 percent for any of the three most recent program cohort default rates.	OMB 1845—NEW3 We estimate that the burden would increase by 8 hours.	292

The total burden hours and change in burden hours associated with each OMB Control number affected by the proposed regulations follows:

Control No.	Total proposed burden hours	Proposed change in burden hours
1845—NEW1	6,907,571	+ 6,907,571
1845—NEW2	29,089	29,0890
1845—NEW3	5,717	5,717
Total	6,942,377	= 6,942,377

Intergovernmental Review

These programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

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 the 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**.

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(Catalog of Federal Domestic Assistance Number: 84.007 FSEOG; 84.032 Federal Family Education Loan Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program; 84.063 Federal Pell Grant Program; 84.069A LEAP; 84.268 William D. Ford Federal Direct Loan Program; 84.376 ACG/Smart; 84.379 TEACH Grant Program; 84.069B Grants for Access and Persistence Program)

List of Subjects

34 CFR Part 600

Colleges and universities, Foreign relations, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

34 CFR Part 668

Administrative practice and procedure, Aliens, Colleges and universities, Consumer protection, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Selective Service System, Student aid, Vocational education.

Dated: March 14, 2014.

Arne Duncan,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education proposes to amend parts 600 and 668 of title 34 of the Code of Federal Regulations as follows:

PART 600—INSTITUTIONAL ELIGIBILITY UNDER THE HIGHER EDUCATION ACT OF 1965, AS AMENDED

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

■ 2. Section 600.2 is amended by:

■ A. Revising the definition of ''Recognized occupation.''

■ B. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 600.2 Definitions.

* * * * *

Recognized occupation: An occupation that is—

(1) Identified by a Standard Occupational Classification (SOC) code established by the Office of Management and Budget (OMB) or an Occupational Information Network O*Net-SOC code established by the Department of Labor, which is available at

www.onetonline.org or its successor site; or

(2) Determined by the Secretary in consultation with the Secretary of Labor to be a recognized occupation.

* * * * *

(Authority: 20 U.S.C. 1001, 1002, 1071, *et seq.,* 1078–2, 1088, 1091, 1094, 1099b, 1099c, 1141; 26 U.S.C. 501(c))

■ 3. Section 600.10 is amended by:

■ A. Revising paragraphs (c)(1), (c)(2), and (c)(3)(i).

■ B. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 600.10 Date, extent, duration, and consequence of eligibility.

* * * * *

(c) *Educational programs.* (1) An eligible institution that seeks to establish the eligibility of an educational program must—

(i) For a gainful employment program under 34 CFR part 668, subpart Q of this chapter, update its application under § 600.21, and meet any time restrictions that prohibit the institution from establishing or reestablishing the eligibility of the program as may be required under 34 CFR 668.414;

(ii) Pursuant to a requirement regarding additional programs included in the institution's program participation agreement under 34 CFR 668.14, obtain the Secretary's approval; and

(iii) For a direct assessment program under 34 CFR 668.10, and for a comprehensive transition and postsecondary program under 34 CFR 668.232, obtain the Secretary's approval.

(2) Except as provided under § 600.20(c), an eligible institution does not have to obtain the Secretary's approval to establish the eligibility of any program that is not described in paragraph (c)(1)(i), (ii), or (iii) of this section.

(3) * * *

(i) Fails to obtain the Secretary's approval for an educational program identified in paragraph (c)(1) of this section; or

* * * * *

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094, and 1141)

■ 4. Section 600.20 is amended by:

■ A. Revising the introductory text of paragraph (c)(1).

■ B. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 600.20 Notice and application procedures for establishing, reestablishing, maintaining, or expanding institutional eligibility and certification.

* * * * *

(c) * * *

(1) Add an educational program or a location at which the institution offers or will offer 50 percent or more of an educational program if one of the following conditions applies, otherwise it must report to the Secretary under § 600.21:

* * * * *

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094, and 1099c)

■ 5. Section 600.21 is amended by:

■ A. Adding paragraph (a)(11).

■ B. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 600.21 Updating application information.

(a) * * *

(11) For any gainful employment program under 34 CFR part 668, subpart Q, for which the institution—

(i) Establishes the eligibility or reestablishes the eligibility of a new program;

(ii) Discontinues the program's eligibility under 34 CFR 668.410;

(iii) Ceases to provide the program for at least 12 consecutive months;

(iv) Loses program eligibility under § 600.40; or

(v) Changes the program's name, CIP code, as defined in 34 CFR 668.402, or credential level.

* * * * *

(Authority: 20 U.S.C. 1094, 1099b)

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 6. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1088, 1091, 1094, 1099b, and 1099c, unless otherwise noted.

§ 668.6 [Removed and Reserved]

■ 7. Remove and reserve section 668.6.

§ 668.7 [Removed and Reserved]

■ 8. Remove and reserve section 668.7.

§ 668.8 [Amended]

■ 9. Section 668.8 is amended by:

■ A. In paragraph (d)(2)(iii), removing the reference to ''§ 668.6'' and adding, in its place, a reference to ''subpart Q of this part''.

■ B. In paragraph (d)(3)(iii), removing the reference to ''§ 668.6'' and adding, in its place, a reference to ''subpart Q of this part''.

■ 10. Section 668.14 is amended by revising paragraph (a)(26) to read as follows:

§ 668.14 Program participation agreement.

(a) * * *

(26) If an educational program offered by the institution is required to prepare a student for gainful employment in a recognized occupation, the institution must—

(i) Demonstrate a reasonable relationship between the length of the program and entry level requirements for the recognized occupation for which the program prepares the student. The Secretary considers the relationship to be reasonable if the number of clock hours provided in the program does not exceed by more than 50 percent the minimum number of clock hours required for training in the recognized occupation for which the program prepares the student, as established by the State in which the institution is located, if the State has established such a requirement, or as established by any Federal agency;

(ii) Establish the need for the training for the student to obtain employment in the recognized occupation for which the program prepares the student; and

(iii) Provide for that program the certification required in § 668.414.

* * * * *

■ 11. Add subpart Q to read as follows:

Subpart Q—Gainful Employment (GE) Programs

Sec.

668.401 Scope and purpose.
668.402 Definitions.
668.403 Gainful employment framework.
668.404 Calculating D/E rates.
668.405 Issuing and challenging D/E rates.
668.406 D/E rates alternate earnings appeals and showings of mitigating circumstances.
668.407 Calculating pCDR.
668.408 Issuing and challenging pCDR.
668.409 Final determination of GE measures.
668.410 Consequences of GE measures.
668.411 Reporting requirements for GE programs.
668.412 Disclosure requirements for GE programs.
668.413 Calculating, issuing, and challenging completion rates, withdrawal rates, repayment rates, median loan debt, and median earnings.
668.414 Certification requirements for GE programs.
668.415 Severability.

Subpart Q—Gainful Employment (GE) Programs

§ 668.401 Scope and purpose.

This subpart applies to an educational program offered by an eligible institution that prepares students for gainful employment in a recognized occupation, and establishes the rules and procedures under which—

(a) The Secretary determines that the program is eligible for title IV, HEA program funds;

(b) An institution reports information about the program to the Secretary; and

(c) An institution discloses information about the program to students and prospective students.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1231a)

§ 668.402 Definitions.

The following definitions apply to this subpart.

Annual earnings rate. The percentage of a GE program's annual loan payment compared to the annual earnings of the students who completed the program, as calculated under § 668.404.

Classification of instructional program (CIP) code. A taxonomy of instructional program classifications and descriptions developed by the U.S. Department of Education's National Center for Education Statistics (NCES). The CIP code for a program is six digits. For the purpose of this subpart, programs that are ''substantially similar'' to one another share the first four digits of a CIP code.

Cohort period. The two-year cohort period or the four-year cohort period during which those students who complete a program are identified in order to assess their loan debt and earnings for the purpose of calculating the D/E rates for the program for an award year.

Credential level. The level of the academic credential awarded by an institution to students who would complete the program. For purposes of this subpart, the undergraduate credential levels are: Less than one year undergraduate certificate or diploma, one year or longer but less than two years undergraduate certificate or diploma, two years or longer undergraduate certificate or diploma, associate degree, and bachelor's degree; and the graduate credential levels are post-baccalaureate certificate (including postgraduate certificates), graduate certificate, master's degree, doctoral degree, and first-professional degree (e.g., MD, DDS, JD).

Debt-to-earnings rates (D/E rates). The discretionary income rate and annual earnings rate as calculated under § 668.404.

Discretionary income rate. The percentage of a GE program's annual loan payment compared to the discretionary income of the students who completed the program, as calculated under § 668.404.

Four-year cohort period. The cohort period covering four consecutive award years that are—

(1) The third, fourth, fifth, and sixth award years prior to the award year for which the D/E rates are calculated pursuant to § 668.404. For example, if D/E rates are calculated for award year 2014–2015, the four-year cohort period is award years 2008–2009, 2009–2010, 2010–2011, and 2011–2012; or

(2) For a program whose students are required to complete a medical or dental internship or residency, the sixth, seventh, eighth, and ninth award years prior to the award year for which the D/E rates are calculated. For example, if D/E rates are calculated for award year 2014–2015, the four-year cohort period is award years 2005–2006, 2006–2007, 2007–2008, and 2008–2009. For this purpose, a required medical or dental internship or residency is a supervised training program that—

(i) Requires the student to hold a degree as a doctor of medicine or osteopathy, or a doctor of dental science;

(ii) Leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers post-graduate training; and

(iii) Must be completed before the student may be licensed by a State and board certified for professional practice or service.

Gainful employment program (GE program). An educational program offered by an institution under § 668.8(c)(3) or (d) and identified by a combination of the institution's six-digit Office of Postsecondary Education ID (OPEID) number, the program's six-digit CIP code as assigned by the institution or determined by the Secretary, and the program's credential level.

GE measures. The debt-to-earnings rates and the program cohort default rate as described in this subpart.

Length of the program. The amount of time in weeks, months, or years that is specified in the institution's catalog, marketing materials, or other official publications for a student to complete the requirements needed to obtain the degree or credential offered by the program.

Metropolitan Statistical Area (MSA). The Metropolitan Statistical Area as published by the U.S. Office of Management and Budget and available at *www.census.gov/population/metro/* or its successor site.

Poverty Guideline. The Poverty Guideline for a single person in the continental United States as published by the U.S. Department of Health and Human Services and available at *http://aspe.hhs.gov/poverty* or its successor site.

Program cohort default rate (pCDR). The percentage of a GE program's students who defaulted on their loans, as calculated under § 668.407.

Prospective student. An individual who has contacted an eligible institution for the purpose of requesting information about enrolling in a GE program or who has been contacted directly by the institution or indirectly through advertising about enrolling in a GE program.

Student. An individual who received title IV, HEA program funds for enrolling in the applicable GE program.

Title IV loan. A loan authorized under the Federal Perkins Loan Program (Perkins Loan), the Federal Family Education Loan Program (FFEL Loan), or the William D. Ford Direct Loan Program (Direct Loan).

Two-year cohort period. The cohort period covering two consecutive award years that are—

(1) The third and fourth award years prior to the award year for which the D/E rates are calculated pursuant to § 668.404. For example, if D/E rates are calculated for award year 2014–2015, the two-year cohort period is award years 2010–2011 and 2011–2012; or

(2) For a program whose students are required to complete a medical or dental internship or residency, the sixth and seventh award years prior to the award year for which the D/E rates are calculated. For example, if D/E rates are calculated for award year 2014–2015, the two-year cohort period is award years 2007–2008 and 2008–2009. For this purpose, a required medical or dental internship or residency is a supervised training program that—

(i) Requires the student to hold a degree as a doctor of medicine or osteopathy, or as a doctor of dental science;

(ii) Leads to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers post-graduate training; and

(iii) Must be completed before the student may be licensed by a State and board certified for professional practice or service.

(Authority: 20 U.S.C. 1001, 1002, 1088)

§ 668.403 Gainful employment program framework.

(a) *General.* A program provides training that prepares students for gainful employment in a recognized occupation if the program—

(1) Satisfies the applicable certification requirements in § 668.414; and

(2) Is not an ineligible program under the provisions for the D/E rates measure described in paragraph (b)(1) or the provisions for the pCDR measure described in paragraph (b)(2) of this section.

(b) *GE measures.* (1) *Debt-to-earnings rates (D/E rates).* For each award year

and for each eligible GE program offered by an institution, the Secretary calculates two D/E rates, the discretionary income rate and the annual earnings rate, using the procedures in §§ 668.404 through 668.406.

(2) *Program cohort default rate (pCDR).* For each fiscal year and for each eligible GE program offered by an institution, the Secretary calculates the pCDR using the procedures in § 668.407.

(c) *Outcomes of GE measures.* (1) *D/E rates.* (i) A GE program is ''passing'' the D/E rates measure if—

(A) Its discretionary income rate is less than or equal to 20 percent; or

(B) Its annual earnings rate is less than or equal to eight percent.

(ii) A GE program is ''failing'' the D/E rates measure if—

(A) Its discretionary income rate is greater than 30 percent or the income for the denominator (discretionary earnings) of the rate is negative or zero; and

(B) Its annual earnings rate is greater than 12 percent or the denominator (annual earnings) of the rate is zero.

(iii) A GE program is ''in the zone'' for the purpose of the D/E rates measure if it is not a passing GE program and its—

(A) Discretionary income rate is greater than 20 percent but less than or equal to 30 percent; or

(B) Annual earnings rate is greater than eight percent but less than or equal to 12 percent.

(iv) For the purpose of the D/E rates measure, a GE program becomes ineligible if the program—

(A) Is failing the D/E rates measure in two out of any three consecutive award years for which the program's D/E rates are calculated; or

(B) Is failing the D/E rates measure or is in the zone for four consecutive award years for which the program's D/E rates are calculated.

(2) *pCDR.* (i) A GE program is ''passing'' the pCDR measure if its pCDR for the most recent fiscal year is less than 30 percent.

(ii) A GE program is ''failing'' the pCDR measure if its pCDR for the most recent fiscal year is 30 percent or greater.

(iii) For the purpose of the pCDR measure, a GE program is ineligible if it fails the pCDR measure for three consecutive fiscal years.

(Authority: 20 U.S.C. 1001, 1002, 1088)

§ 668.404 Calculating D/E rates.

(a) *General.* Except as provided in paragraph (f) of this section, for each award year, the Secretary calculates D/E rates for a GE program as follows:

(1) Discretionary income rate = annual loan payment/(the higher of the mean or median annual earnings—(1.5 × Poverty Guideline)).

(2) Annual earnings rate = annual loan payment/the higher of the mean or median annual earnings.

(b) *Annual loan payment.* The Secretary calculates the annual loan payment for a GE program by—

(1) Determining the median loan debt of the students who completed the program during the applicable cohort period, based on the lesser of—

(i) The loan debt incurred by each student as determined under paragraph (d) of this section; and

(ii) The total amount of tuition and fees the institution assessed each student for enrollment in the program and the total amount for books, equipment, and supplies, as reported in § 668.411(a)(1)(iv) and (v).

(2) Amortizing the median loan debt—

(i)(A) Over a 10-year repayment period for a program that leads to an undergraduate certificate, a post-baccalaureate certificate, an associate degree, or a graduate certificate;

(B) Over a 15-year repayment period for a program that leads to a bachelor's degree or a master's degree; or

(C) Over a 20-year repayment period for a program that leads to a doctoral or first-professional degree;

(ii) Using an annual interest rate that is the average of the statutorily determined annual interest rate on Federal Direct Unsubsidized Loans made during the six-year period prior to the end of the applicable cohort period, which includes the applicable cohort period, where—

(A) For a program that leads to an undergraduate certificate, an associate degree, a bachelor's degree, or a post-baccalaureate certificate, the average interest rate is based on the rate of a Federal Direct Unsubsidized Loan made to an undergraduate student; and

(B) For a program that leads to a master's degree, a graduate certificate, or a doctoral or first-professional degree, the average interest rate is based on the rate of a Federal Direct Unsubsidized Loan made to a graduate student.

Note to paragraph (b)(2)(ii): For example, if the two-year cohort period is award years 2010–2011 and 2011–2012, the interest rate would be the average of the interest rates for the years from 2006–2007 through 2011–2012.

(c) *Annual earnings.* (1) The Secretary obtains from the Social Security Administration (SSA) or another Federal agency, under § 668.405, the most currently available mean and median annual earnings of the students who completed the GE program during the applicable cohort period and who are not excluded under paragraph (e) of this section; and

(2) The Secretary uses the higher of the mean or median annual earnings to calculate the D/E rates.

(d) *Loan debt.* In determining the loan debt for a student, the Secretary—

(1) Includes—

(i) The amount of title IV loans that the student borrowed for enrollment in the GE program (Federal PLUS Loans made to parents of dependent students, Direct PLUS Loans made to parents of dependent students, and Direct Unsubsidized Loans that were converted from TEACH Grants are not included);

(ii) Any private education loans as defined in 34 CFR 601.2, including private education loans made by the institution, that the student borrowed for enrollment in the program and that were required to be reported by the institution under § 668.411; and

(iii) Any credit extended by or on behalf of the institution for enrollment in the GE program that the student is obligated to repay after the student's completion of the program, regardless of who holds the debt, even if that obligation is excluded from the definition of ''private education loan,'' in 34 CFR 601.2;

(2) Attributes all of the loan debt incurred by the student for enrollment in any—

(i) Undergraduate GE program at the institution to the highest credentialed undergraduate GE program subsequently completed by the student at the institution as of the end of the most recently completed award year prior to the calculation of the draft D/E rates under this section;

(ii) Graduate GE program at the institution to the highest credentialed graduate GE program completed by the student at the institution as of the end of the most recently completed award year prior to the calculation of the draft D/E rates under this section; and

(iii) Post-baccalaureate GE program, graduate certificate GE program, or graduate degree GE program at the institution to the highest credentialed graduate degree GE program completed by the student at the institution as of the end of the most recently completed award year prior to the calculation of the draft D/E rates under this section; and

(3) Excludes any loan debt incurred by the student for enrollment in programs at other institutions. However, the Secretary may include loan debt incurred by the student for enrolling in GE programs at other institutions if the institution and the other institutions are

under common ownership or control, as determined by the Secretary in accordance with 34 CFR 600.31.

(e) *Exclusions.* The Secretary excludes a student from both the numerator and the denominator of the D/E rates calculation if the Secretary determines that—

(1) One or more of the student's title IV loans were in a military-related deferment status at any time during the calendar year for which the Secretary obtains earnings information under paragraph (c) of this section;

(2) One or more of the student's title IV loans are under consideration by the Secretary, or have been approved, for a discharge on the basis of the student's total and permanent disability, under 34 CFR 674.61, 682.402, or 685.212;

(3) The student was enrolled in any other eligible program at the institution or at another institution during the calendar year for which the Secretary obtains earnings information under paragraph (c) of this section;

(4) For undergraduate GE programs, the student completed a higher credentialed undergraduate program at the institution subsequent to completing the program as of the end of the most recently completed award year prior to the calculation of the draft D/E rates under this section;

(5) For post-baccalaureate, graduate certificate, or graduate degree GE programs, the student completed a higher credentialed graduate GE program at the institution subsequent to completing the program as of the end of the most recently completed award year prior to the calculation of the draft D/E rates under this section; or

(6) The student died.

(f) *D/E rates not calculated.* The Secretary does not calculate D/E rates for a GE program if—

(1) After applying the exclusions in paragraph (e) of this section, fewer than 30 students completed the program during the two-year cohort period and fewer than 30 students completed the program during the four-year cohort period; or

(2) SSA does not provide the mean and median earnings for the program as provided under paragraph (c) of this section.

(g) *Transition period.* (1) If a GE program would be failing or in the zone based on its draft D/E rates calculated in accordance with paragraphs (a) through (f) of this section for any of the first four award years for which the Secretary calculates D/E rates, the Secretary calculates transitional draft D/E rates for the program by using—

(i) The median loan debt of the students who completed the program during the most recently completed award year prior to the calculation of the D/E rates; and

(ii) The earnings used to calculate the draft D/E rates under paragraph (c) of this section.

(2) For the award years listed in paragraph (g)(1), the Secretary determines the final D/E rates for the program by using the lower of the draft D/E rates calculated under paragraphs (a) through (f) of this section or the transitional draft D/E rates calculated under this paragraph (g).

(3) The institution may challenge the transitional draft D/E rates under the procedures in § 668.405 and may appeal the transitional final D/E rates under § 668.406.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.405 Issuing and challenging D/E rates.

(a) *Overview.* For each award year, the Secretary determines the D/E rates for a GE program at an institution by—

(1) Creating a list of the students who completed the program during the applicable cohort period and providing the list to the institution, as provided in paragraph (b) of this section;

(2) Allowing the institution to correct the information about the students on the list, as provided in paragraph (c) of this section;

(3) Obtaining from SSA or another Federal agency the mean and median annual earnings of the students on the list, as provided in paragraph (d) of this section;

(4) Calculating draft D/E rates and providing them to the institution, as provided in paragraph (e) of this section;

(5) Allowing the institution to challenge the median loan debt used to calculate the draft D/E rates, as provided in paragraph (f) of this section;

(6) Calculating final D/E rates and providing them to the institution, as provided in paragraph (g) of this section; and

(7) Allowing the institution to appeal the final D/E rates as provided in § 668.406.

(b) *Creating the list of students.* (1) The Secretary selects the students to be included on the list by—

(i) Identifying the students who completed the program during the applicable cohort period from the data provided by the institution under § 668.411; and

(ii) Indicating which students would be removed from the list under § 668.404(e) and the specific reason for the exclusion.

(2) The Secretary provides the list to the institution and states which cohort period was used to select the students.

(c) *Institutional corrections to the list.* (1) The Secretary presumes that the list of students and the identity information for those students are correct unless, as set forth in procedures established by the Secretary, the institution provides evidence to the contrary satisfactory to the Secretary. The institution bears the burden of proof that the list is incorrect.

(2) No later than 45 days after the date the Secretary provides the list to the institution, the institution may—

(i) Provide evidence showing that a student should be included on or removed from the list pursuant to § 668.404(e); or

(ii) Correct or update a student's identity information and the student's program attendance information.

(3) After the 45-day period expires, the institution may no longer seek to correct the list of students or revise the identity or program information of those students included on this list that the Secretary uses to determine the D/E rates for the program.

(4) The Secretary considers the evidence provided by the institution and either accepts the correction or notifies the institution of the reasons for not accepting the correction. If the Secretary accepts the correction, the Secretary uses the corrected information to create the final list. The Secretary notifies the institution which students are included on the final list and the applicable cohort period used to create the final list.

(d) *Obtaining earnings data.* The Secretary submits the final list to SSA or another Federal agency. For purposes of this section, SSA returns to the Secretary—

(1) The mean and median annual earnings of the students on the list whom SSA has matched to SSA earnings data, in aggregate and not in individual form; and

(2) The number, but not the identities, of students on the list that SSA could not match.

(e) *Calculating draft D/E rates.* (1) The Secretary uses the higher of the mean or median annual earnings provided by SSA to calculate draft D/E rates for a GE program, as provided in § 668.404.

(2) If SSA reports that it was unable to match one or more of the students on the final list, the Secretary does not include in the calculation of the median loan debt the same number of students with the highest loan debts as the number of students whose earnings SSA did not match. For example, if SSA is unable to match three students out of 100 students, the Secretary orders by

amount the debts of the 100 listed students and excludes from the D/E rates calculation the three largest loan debts.

(3)(i) The Secretary notifies the institution of the draft D/E rates for the program and provides the mean and median annual earnings obtained from SSA and the individual student loan information used to calculate the rates, including the loan debt that was used in the calculation for each student.

(ii) The draft D/E rates and the data described in paragraphs (b) through (e) of this section are not considered public information.

(f) *Institutional challenges to draft D/E rates.* (1) The Secretary presumes that the loan debt information used to calculate the median loan debt for the program under § 668.404 is correct unless the institution provides evidence, as provided in paragraph (f)(2) of this section, that the information is incorrect. The institution bears the burden of proof to show that the loan debt information is incorrect, and to show how it should be corrected.

(2) No later than 45 days after the Secretary notifies an institution of the draft D/E rates for a program, the institution may challenge the accuracy of the loan debt information that the Secretary used to calculate the median loan debt for the program under § 668.404 by submitting evidence, in a format and through a process determined by the Secretary, that demonstrates that the median loan debt calculated by the Secretary is incorrect.

(3) In a challenge under this section, the Secretary does not consider—

(i) Any objection to the mean or median annual earnings that SSA provided to the Secretary;

(ii) More than one challenge to the student-specific data on which draft D/E rates are based for a program for an award year; or

(iii) Any challenge that is not timely submitted.

(4) The Secretary considers the evidence provided by an institution challenging the median loan debt and notifies the institution of whether the challenge is accepted or the reasons why the challenge is not accepted.

(5) If the information from an accepted challenge changes the median loan debt of the program, the Secretary recalculates the program's draft D/E rates.

(6) Except as provided under § 668.406, an institution that does not timely challenge the draft D/E rates for a program waives any objection to those rates.

(g) *Final D/E rates.* (1) After expiration of the 45-day period and subject to resolution of any challenge under paragraph (f) of this section, a program's draft D/E rates constitute its final D/E rates.

(2) The Secretary informs the institution of the final D/E rates for each of its GE programs by issuing the notice of determination described in § 668.409(a).

(3) After the Secretary provides the notice of determination to the institution, the Secretary may publish the final D/E rates for the program.

(h) *Conditions for corrections and challenges.* An institution must ensure that any material that it submits to make any correction or challenge under this section is complete, timely, accurate, and in a format acceptable to the Secretary and consistent with any instructions provided to the institution with the notice of its draft D/E rates and the notice of determination.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.406 D/E rates alternate earnings appeals and showings of mitigating circumstances.

(a) *Alternate earnings appeals.* (1) *General.* If a GE program is failing or in the zone under the D/E rates measure, an institution may file an alternate earnings appeal to request recalculation of the program's most recent final D/E rates issued by the Secretary.

(2) *Basis for appeals.* (i) The institution may use alternate earnings from an institutional survey conducted under paragraph (a)(3), or from a State-sponsored data system under paragraph (a)(4) of this section, to recalculate the program's final D/E rates and file an appeal if—

(A) For a program that was failing the D/E rates measure, the program's recalculated rates are passing or in the zone; or

(B) For a program that was in the zone for the purpose of the D/E rates measure, the program's recalculated rates are passing.

(ii) In recalculating the final D/E rates, the institution must—

(A) For the numerator, use the annual loan payment used in the calculation of the final D/E rates; and

(B) For the denominator, use the higher of the mean or median alternate earnings. The alternate earnings must be from the same calendar year for which the Secretary obtained earnings data from SSA to calculate the final D/E rates under § 668.404.

(3) *Survey requirements for appeals.* An institution must—

(i) In accordance with the standards included on an Earning Survey Form developed by NCES, conduct a survey, to obtain annual earnings information, of all the students (as defined in § 668.402) who completed the program during the same cohort period that the Secretary used to calculate the final D/E rates under § 668.404. The Secretary will publish in the **Federal Register** the Earnings Survey Form that will include a field-tested sample survey as well as the survey standards. An institution is not required to use the Earnings Survey Form but must adhere to the survey standards included in the form in conducting a survey under this section.

(ii) Submit to the Secretary as part of its appeal—

(A) A certification signed by the institution's chief executive officer attesting that the survey was conducted in accordance with the survey standards in the Earnings Survey Form, and that the mean or median earnings used to recalculate the D/E rates was accurately determined from the survey results;

(B) An examination-level attestation engagement report prepared by an independent public accountant or independent governmental auditor, as appropriate, that the survey was conducted in accordance with the requirements set forth in the NCES Earnings Survey Form. The attestation must be conducted in accordance with the attestation standards contained in the Government Accountability Office's Government Auditing Standards promulgated by the Comptroller General of the United States (available at *www.gao.gov/yellowbook/overview* or its successor site), and with procedures for attestations contained in guides developed by and available from the Department of Education's Office of Inspector General; and

(C) Supporting documentation requested by the Secretary.

(4) *State-sponsored data system requirements for appeals.* An institution must—

(i) Obtain annual earnings data from one or more State-sponsored data systems by submitting a list of the students (as defined in § 668.402) who completed the GE program in the applicable cohort period to the administrator of each State-sponsored data system used for the appeal;

(ii) Demonstrate that annual earnings data were obtained for more than 50 percent of the students on the list, and that the number of students for whom earnings data were obtained is 30 or more; and

(iii) Submit as part of its appeal—

(A) A certification signed by the institution's chief executive officer attesting that it accurately used the State-provided earnings data to recalculate the D/E rates; and

(B) Supporting documentation requested by the Secretary.

(5) *Appeals procedure.* (i) For any appeal under this section, in accordance with procedures established by the Secretary and provided in the notice of draft D/E rates under § 668.405 and the notice of determination under § 668.409, the institution must—

(A) Notify the Secretary of its intent to submit an appeal no earlier than the date that the Secretary provides the institution the draft D/E rates under § 668.405(f), but no later than three business days after the date the Secretary issues the notice of determination under § 668.409(a) informing the institution of the final D/E rates under § 668.405(g); and

(B) Submit the recalculated D/E rates, all certifications, and specified supporting documentation related to the appeal no later than 60 days after the date the Secretary issues the notice of determination.

(ii) An institution that timely submits an appeal that meets the requirements of this section is not subject to any consequences under § 668.410 based on the D/E rates under appeal while the Secretary considers the appeal. If the Secretary has published final D/E rates under § 668.405(g), the program's final D/E rates will be annotated to indicate that they are under appeal.

(iii) An institution that does not submit a timely appeal waives its right to appeal the GE program's failing or zone D/E rates for the relevant award year.

(6) *Appeals determinations.* (i) *Appeals denied.* If the Secretary denies an appeal, the Secretary notifies the institution of the reasons for denying the appeal, and the program's final D/E rates previously issued in the notice of determination under § 668.409(a) remain the final D/E rates for the program for the award year.

(ii) *Appeals granted.* If the Secretary grants the appeal, the Secretary notifies the institution that the appeal is granted, that the recalculated D/E rates are the new final
D/E rates for the program for the award year, and of any consequences of the recalculated rates under § 668.410. If the Secretary has published final D/E rates under § 668.405(g), the program's published rates will be updated to reflect the new final D/E rates.

(b) *Showings of mitigating circumstances.* (1) *General.* If a GE program is failing or in the zone under the D/E rates measure, an institution may avoid or mitigate the consequences that the Secretary may otherwise impose under § 668.410 by making a successful showing of mitigating circumstances with respect to the program's most recent final D/E rates issued by the Secretary.

(2) *Basis for showing.* The institution may make a showing of mitigating circumstances if less than 50 percent of all the individuals who completed the program during the applicable cohort period, including those who received and those who did not receive title IV, HEA program funds, incurred loan debt (as defined in § 668.404(d)) for enrollment in the program, referred to in this section as the ''borrowing rate.''

(3) *Showing requirements.* An institution must—

(i) Calculate the borrowing rate by—

(A) Identifying the individuals (including those who received title IV, HEA program funds and those who did not) who were enrolled in the program on at least a half-time basis at any time during the applicable cohort period, and who completed the program during the applicable cohort period;

(B) Determining which of the individuals identified under paragraph (b)(3)(i)(A) of this section incurred loan debt (as defined in § 668.404(d)) for enrollment in the program; and

(C) Dividing the number of individuals who incurred loan debt under paragraph (b)(3)(i)(B) by the total number of individuals identified under paragraph (b)(3)(i)(A) of this section; and

(ii) Submit as part of its showing—

(A) A certification signed by its chief executive officer identifying the borrowing rate and attesting to its accuracy; and

(B) Supporting documentation requested by the Secretary.

(4) *Showing procedure.* (i) For any showing under this section, in accordance with procedures established by the Secretary and provided in the notice of draft D/E rates under § 668.405 and the notice of determination under § 668.409, the institution must—

(A) Notify the Secretary of its intent to make a showing of mitigating circumstances no earlier than the date that the Secretary provides the institution the draft D/E rates under § 668.405(f), but no later than three business days after the date the Secretary issues the notice of determination under § 668.409(a) informing the institution of the final D/E rates under § 668.405(g); and

(B) Submit its borrowing rate calculations, all certifications, and specified supporting documentation related to the showing no later than 60 days after the date the Secretary issues the notice of determination.

(ii) An institution that timely submits a showing of mitigating circumstances that meets the requirements of this section is not subject to any consequences under § 668.410 based on the D/E rates for the year in which the showing is made while the Secretary considers the showing. If the Secretary has published final D/E rates under § 668.405(g), the program's final D/E rates will be annotated to indicate that the institution has filed to make a showing of mitigating circumstances.

(iii) An institution that does not make a timely showing of mitigating circumstances for a GE program waives its right to make such a showing for the relevant award year in any subsequent determination with respect to the GE program.

(5) *Showing determinations.* (i) *Showings denied.* If the Secretary denies a showing of mitigating circumstances, the Secretary notifies the institution of the reasons for denying the showing, and the program's final D/E rates previously issued in the notice of determination under § 668.409(a) remain the final D/E rates for the program for the award year.

(ii) *Showings accepted.* If the Secretary accepts the showing of mitigating circumstances, the Secretary notifies the institution that the showing is accepted and that the program is deemed to have passed the D/E rates measure for the relevant year. If the Secretary has published final D/E rates under § 668.405(g), the program's published rates will remain the same, but will be annotated to indicate that the program's showing of mitigating circumstances was accepted.

(c) *Conditions for alternate earnings appeals and showings of mitigating circumstances.* An institution must ensure that any material that it submits to make any appeal or showing of mitigating circumstances under this section is complete, timely, accurate, and in a format acceptable to the Secretary and consistent with any instructions provided to the institution with the notice of determination.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.407 Calculating pCDR.

For each fiscal year, the Secretary calculates the pCDR of a GE program using the same methodology the Secretary uses to calculate the institutional cohort default rate (institutional CDR) pursuant to section 435(a) of the HEA. The methodology and the procedures used for calculating pCDR are set forth in subpart R of this part.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.408 Issuing and challenging pCDR.

For each fiscal year, the Secretary notifies the institution of the pCDR for the program determined under subpart R of this part. The institution may challenge or appeal the pCDR under the procedures for challenges and appeals set forth in subpart R of this part.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.409 Final determination of GE measures.

(a) *Notice of determination.* For each award year for the D/E rates measure and fiscal year for the pCDR measure for which the Secretary calculates a GE measure for a GE program, the Secretary issues a notice of determination informing the institution of the following:

(1) For the D/E rates—

(i) The final rates for the program as determined under § 668.404, § 668.405, and, if applicable, § 668.406;

(ii) The final determination by the Secretary of whether the program is passing, failing, in the zone, or ineligible, as described in § 668.403, and the consequences of that determination;

(iii) Whether the program could become ineligible based on its final D/E rates for the next award year for which D/E rates are calculated for the program;

(iv) Whether the institution is required to provide the student warning under § 668.410(a); and

(v) If the program's final D/E rates are failing or in the zone, instructions on how it may make an alternate earnings appeal or make a showing of mitigating circumstances pursuant to § 668.406.

(2) For the pCDR—

(i) The official pCDR for the program as determined under § 668.505 or, if changed by adjustment or appeal, as determined under § 668.508(e)(3);

(ii) The instructions for requesting adjustment to or appealing an official pCDR as provided in § 668.508;

(iii) The final determination of the Secretary of whether the program is passing, failing, or ineligible, as described in § 668.403, and the consequences of that determination; and

(iv) Whether the institution is required to provide the student warning under § 668.410(a).

(b) *Effective date of Secretary's final determination.* The Secretary's determination as to a GE measure is effective on the date that is specified in the notice of determination. The determination, including, as applicable, the determination with respect to an appeal or showing of mitigating circumstances under § 668.406, constitutes the final decision of the Secretary with respect to that GE measure and the Secretary provides for no further appeal of that determination.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.410 Consequences of GE measures.

(a) *Student warning.* For any year for which the Secretary notifies an institution that a GE program could become ineligible based on a final GE measure for the next award or fiscal year, the institution—

(1) Must provide a written warning directly to each student enrolled in the program no later than 30 days after the date of the Secretary's notice of determination under § 668.409. ''Directly'' means by hand-delivering the warning to the student individually or as part of a group presentation, or sending the warning to the primary email address used by the institution for communicating with the student about the program. The Secretary will conduct consumer testing to determine how to make the student warning as meaningful as possible. Unless otherwise specified by the Secretary in a notice published in the **Federal Register**, the warning must—

(i) State that: ''You may not be able to use federal student grants or loans to pay for this institution's program next year because the program is currently failing standards established by the U.S. Department of Education. The Department set these standards to help ensure that you are able to find gainful employment in a recognized occupation, and are not burdened by loan debt you may not be able to repay. A program that doesn't meet these standards may lose the ability to provide students with access to federal financial aid to pay for the program.

(ii) Describe the options available to the student to continue his or her education at the institution, or at another institution, in the event that the program loses its eligibility for title IV, HEA program funds; and

(iii) Indicate whether or not the institution will—

(A) Allow the student to transfer to another program at the institution;

(B) Continue to provide instruction in the program to allow the student to complete the program; and

(C) Refund the tuition, fees, and other required charges paid to the institution by, or on behalf of, the student for enrollment in the program.

(2) For each prospective student—

(i) At the time the prospective student first contacts, or is contacted by, the institution about the GE program, must provide a written warning directly to the student. The Secretary will conduct consumer testing to determine how to make the student warning as meaningful as possible. Unless otherwise specified by the Secretary in a notice published in the **Federal Register**, the warning must state: ''You may not be able to use federal student grants or loans to pay for this institution's program in the future because the program is currently failing standards established by the U.S. Department of Education. The Department set these standards to help ensure that students are able to find gainful employment in a recognized occupation and are not burdened by debt they struggle to repay. A program in violation of these standards may lose the ability to provide students with access to federal financial aid to pay for the program.''; and

(ii) May not enroll, register, or enter into a financial commitment with the prospective student in the program earlier than—

(A) Three business days after the warning was first provided to the prospective student; or

(B) If more than 30 days have passed from the date the warning is first provided to the prospective student, three business days after the institution provides another warning as required by paragraph (a)(2)(i) of this section.

(3) To the extent practicable, must provide alternatives to English-language warnings for those students and prospective students for whom English is not their first language.

(b) *Restrictions.* (1) *Ineligible program.* Except as provided in § 668.26(d), an institution may not disburse title IV, HEA program funds to students enrolled in an ineligible program.

(2) *Period of ineligibility.* An institution may not seek to reestablish the eligibility of a failing or zone program that it discontinued voluntarily, reestablish the eligibility of an ineligible program, or establish the eligibility of a program that is substantially similar to the discontinued or ineligible program, until three years following the date on which the program became ineligible or the institution discontinued the failing or zone program.

(3) *Restoring eligibility.* An ineligible program, or a failing or zone program that an institution voluntarily discontinues, remains ineligible until the institution establishes the eligibility of that program under § 668.414(b). For this purpose, an institution voluntarily discontinues a failing or zone program on the date the institution provides written notice to the Secretary that it relinquishes title IV, HEA program eligibility of that program.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094, 1099c)

§ 668.411 Reporting requirements for GE programs.

(a) In accordance with procedures established by the Secretary, an institution must report—

(1) For each student enrolled in a GE program during an award year who received title IV, HEA program funds for enrolling in that program—

(i) Information needed to identify the student and the institution;

(ii) The name, CIP code, credential level, and length of the program;

(iii) Whether the program is a medical or dental program whose students are required to complete an internship or residency, as described in § 668.402;

(iv) The date the student initially enrolled in the program;

(v) The student's attendance dates and attendance status (e.g., enrolled, withdrawn, or completed) in the program during the award year; and

(vi) The student's enrollment status (e.g., full-time, three-quarter time, half-time, less than half-time) as of the first day of the student's enrollment in the program;

(2) If the student completed or withdrew from the GE program during the award year—

(i) The date the student completed or withdrew from the program;

(ii) The total amount the student received from private education loans, as described in § 668.404(d)(1)(ii), for enrollment in the program that the institution is, or should reasonably be, aware of;

(iii) The total amount of institutional debt, as described in § 668.404(d)(1)(iii), the student owes any party after completing or withdrawing from the program;

(iv) The total amount of tuition and fees assessed the student for the student's entire enrollment in the program; and

(v) The total amount of the allowances for books, supplies, and equipment included in the student's title IV Cost of Attendance (COA) for each award year in which the student was enrolled in the program, or a higher amount if assessed the student by the institution; and

(3) As described in a notice published by the Secretary in the **Federal Register**, any other information the Secretary requires the institution to report.

(b)(1) An institution must report the information required under paragraph (a) of this section no later than—

(i) July 31, following the date these regulations take effect, for the second through seventh award years prior to that date;

(ii) For medical and dental programs that require an internship or residency, July 31, following the date these regulations take effect for the second through eighth award years prior to that date; and

(iii) For subsequent award years, October 1, following the end of the award year, unless the Secretary establishes a later date in a notice published in the **Federal Register**.

(2) For any award year, if an institution fails to provide all or some of the information in paragraph (a) of this section to the extent required, the institution must provide to the Secretary an explanation, acceptable to the Secretary, of why the institution failed to comply with any of the reporting requirements.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1231a)

§ 668.412 Disclosure requirements for GE programs.

(a) *Disclosure template.* An institution must use the disclosure template provided by the Secretary to disclose information about each of its GE programs to enrolled and prospective students. The Secretary will conduct consumer testing to determine how to make the disclosure template as meaningful as possible. The Secretary identifies the information that must be included in the template in a notice published in the **Federal Register**. That information may include, but is not limited to:

(1) The primary occupations (by name and SOC code) that the program prepares students to enter, along with links to occupational profiles on O*NET (*www.onetonline.org*) or its successor site.

(2) As calculated by the Secretary under § 668.413, the program's completion rates for full-time and less-than-full-time students and the program's withdrawal rates.

(3) The length of the program in calendar time (i.e., weeks, months, years).

(4) The number of clock or credit hours, as applicable, in the program.

(5) The total number of individuals enrolled in the program during the most recently completed award year.

(6) As calculated by the Secretary under § 668.413, the loan repayment rate for any one or all of the following groups of students who entered repayment on title IV loans during the two-year cohort period:

(i) All students who enrolled in the program.

(ii) Students who completed the program.

(iii) Students who withdrew from the program.

(7) The total cost of tuition and fees, and the total cost of books, supplies, and equipment that a student would incur for completing the program within the length of the program.

(8) The placement rate for the program, if the institution is required by its accrediting agency or State to calculate a placement rate.

(9) Of the individuals enrolled in the program during the most recently completed award year, the percentage who incurred debt for enrollment in the program.

(10) As calculated by the Secretary, the median loan debt as determined under § 668.404(d) of any one or all of the following groups of title IV, HEA loan program borrowers:

(i) Those students who completed the program during the most recently completed award year.

(ii) Those students who withdrew from the program during the most recently completed award year.

(iii) All of the students described in paragraphs (a)(10)(i) and (ii) of this section.

(11) As provided by the Secretary, the median earnings of any one or all of the following groups of students:

(i) Students who completed the program during the applicable cohort period used by the Secretary to calculate the most recent D/E rates for the program under this subpart.

(ii) Students who were in withdrawn status at the end of the applicable cohort period used by the Secretary to calculate the most recent D/E rates for the program under this subpart.

(iii) All of the students described in paragraph (a)(11)(i) and (ii) of this section.

(12) As calculated by the Secretary under § 668.407, the most recent pCDR.

(13) As calculated by the Secretary under § 668.404, the most recent annual earnings rate.

(14) With respect to the occupations for which the program prepares students as disclosed by the institution under paragraph (a)(1) of this section, whether completion of the program satisfies any applicable educational prerequisites for professional licensure in the State in which the institution is located and in any other State included in the institution's Metropolitan Statistical Area.

(15) If applicable, whether the program holds the programmatic accreditation necessary for an individual to obtain employment in the occupation for which the program prepares the student.

(16) A link to the U.S. Department of Education's College Navigator Web site, or its successor site.

(b) *Disclosure updates.* (1) In accordance with procedures and

timelines established by the Secretary, the institution must update at least annually the information contained in the disclosure template with the most recent data available for each of its GE programs.

(2) Within 30 days of receiving notice from the Secretary that the institution must provide a student warning for the program under § 668.410(a), the institution must update the disclosure template to include the warning for both enrolled and prospective students.

(c) *Web link to disclosure information.* (1) On any Web page containing academic, cost, financial aid, or admissions information about a GE program, the institution must provide a prominent, readily accessible, clear, conspicuous, and direct link to the disclosure template for that program.

(2) An institution that offers a GE program in more than one location or format (e.g., full-time, part-time, accelerated, differing lengths) may publish a separate disclosure template for each location or format if doing so would result in clearer disclosures under paragraph (a). An institution that chooses to publish separate disclosure templates for each location or format must ensure that each disclosure template clearly identifies the applicable location or format.

(3) In addition to other actions the Secretary may take, the Secretary may require the institution to modify its Web page if the link for the disclosure template is not prominent, readily accessible, clear, conspicuous, and direct.

(d) *Promotional materials.* (1) All promotional materials that an institution makes available to prospective students that identify a GE program by name or otherwise promote the program must include—

(i) The disclosure template in a prominent manner; or

(ii) Where space or airtime constraints would preclude the inclusion of the disclosure template, the Web address (URL) of, or the direct link to, the disclosure template, provided that the institution identifies the URL or link as ''Important Information about the educational debt, earnings, and completion rates of students who attended this program'' or as otherwise specified by the Secretary in a notice published in the **Federal Register**.

(2) Promotional materials include, but are not limited to, an institution's catalogs, invitations, flyers, billboards, and advertising on or through radio, television, print media, the Internet, and social media.

(3) The institution must ensure that all promotional materials, including printed materials, about a GE program are accurate and current at the time they are published, approved by a State agency, or broadcast.

(e) *Direct distribution to prospective students.* (1) An institution must provide, as a separate document, a copy of the disclosure template to a prospective student.

(2) Before the prospective student signs an enrollment agreement, completes registration, or makes a financial commitment to the institution, the institution must obtain written confirmation from the prospective student that the prospective student received a copy of the disclosure template.

(Authority: 20 U.S.C. 1001, 1002, 1088)

§ 668.413 Calculating, issuing, and challenging completion rates, withdrawal rates, repayment rates, median loan debt, and median earnings.

(a) *General.* Under the procedures in this section, the Secretary determines the completion rates, withdrawal rates, repayment rates, median loan debt, and median earnings an institution must disclose under § 668.412 for each of its GE programs, notifies the institution of that information, and provides the institution an opportunity to challenge the calculations.

(b) *Calculating completion rates, withdrawal rates, repayment rates, median loan debt, and median earnings.*

(1) *Completion rates.* The Secretary calculates the completion rates of a GE program. For the purpose of this calculation, the ''enrollment cohort'' is comprised of the students who enrolled in the program at any time during the relevant award year. The Secretary calculates completion rates as follows:

(i) For students whose enrollment status is full-time on the first day of the student's enrollment in the program:

$$\frac{\text{Number of full-time students in the enrollment cohort who completed the program within 100\% of the length of the program}}{\text{Number of full-time students in the enrollment cohort}}$$

and

$$\frac{\text{Number of full-time students in the enrollment cohort who completed the program within 150\% of the length of the program}}{\text{Number of full-time students in the enrollment cohort}}$$

(ii) For students whose enrollment status is less than full-time on the first day of the student's enrollment in the program:

$$\frac{\text{Number of less-than-full-time students in the enrollment cohort who completed the program within 200\% of the length of the program}}{\text{Number of less-than-full-time students in the enrollment cohort}}$$

and

$$\frac{\text{Number of less-than-full-time students in the enrollment cohort who completed the program within 300\% of the length of the program}}{\text{Number of less-than-full-time students in the enrollment cohort}}$$

(2) *Withdrawal rate.* The Secretary calculates two withdrawal rates of a GE program. For the purpose of this calculation, the ''enrollment cohort'' is comprised of the students receiving title IV, HEA program funds who enrolled in the program at any time during the relevant award year. The Secretary calculates withdrawal rates as follows:

(i) The percentage of students in the enrollment cohort who withdrew from the program within 100 percent of the length of the program;

(ii) The percentage of students in the enrollment cohort who withdrew from the program within 150 percent of the length of the program.

(3) *Loan repayment rate.* For an award year, the Secretary calculates a loan repayment rate for borrowers not excluded under paragraph (b)(3)(vi) of this section who enrolled in a GE program as follows:

$$\frac{\text{Number of borrowers paid in full plus number of borrowers in active repayment}}{\text{Number of borrowers entering repayment}}$$

(i) *Number of borrowers entering repayment.* The total number of borrowers who entered repayment during the two-year cohort period on FFEL or Direct Loans received for enrollment in the program.

(ii) *Number of borrowers paid in full.* Of the number of borrowers entering repayment, the number who have fully repaid all FFEL or Direct Loans received for enrollment in the program.

(iii) *Number of borrowers in active repayment.* Of the number of borrowers entering repayment, the number who, during the most recently completed award year, made loan payments sufficient to reduce by at least one dollar the outstanding balance of each of the borrower's FFEL or Direct Loans received for enrollment in the program, including consolidation loans that include a FFEL or Direct Loan received for enrollment in the program, by comparing the outstanding balance of each loan at the beginning and end of the award year.

(iv) *Loan defaults.* A borrower who defaulted on a FFEL or Direct Loan is not included in the numerator of the loan repayment rate formula even if that loan has been paid in full or meets the definition of being in active repayment.

(v) *Repayment rates for borrowers who completed or withdrew.* The Secretary may modify the formula in this paragraph to calculate repayment rates for only those borrowers who completed the program or for only those borrowers who withdrew from the program.

(vi) *Exclusions.* For the award year the Secretary calculates the loan repayment rate for a program, the Secretary excludes a borrower from the repayment rate calculation if the Secretary determines that—

(A) One or more of the borrower's FFEL or Direct loans were in a military-related deferment status at any time during the most recently completed award year;

(B) One or more of the borrower's FFEL or Direct loans are either under consideration by the Secretary, or have been approved, for a discharge on the basis of the borrower's total and permanent disability, under 34 CFR 682.402 or 685.212;

(C) The borrower was enrolled in any other eligible program at the institution or at another institution during the most recently completed award year; or

(D) The borrower died.

(4) *Median loan debt for students who completed the GE program.* For the most recently completed award year, the Secretary calculates a median loan debt for the students described in § 668.412(a)(10)(i), who completed the program during the award year. The median is calculated on debt described in § 668.404(d)(1).

(5) *Median loan debt for students who withdrew from the GE program.* For the most recently completed award year, the Secretary calculates a median loan debt for the students described in § 668.412(a)(10)(ii), who enrolled in a GE program and who withdrew from the program during the award year. The median is calculated on debt described in § 668.404(d)(1).

(6) *Median loan debt for students who completed and withdrew from the GE program.* For the most recently completed award year, the Secretary calculates a median loan debt for the students described in § 668.412(a)(10)(iii) who enrolled in a GE program and who completed the GE program during the award year and those students who withdrew from the GE program during the award year. The median is calculated on debt described in § 668.404(d)(1).

(7) *Median earnings.* The Secretary calculates the median earnings of a GE program as described in paragraphs (b)(8) through (b)(12) of this section.

(8) *Median earnings for students who completed the GE program.* (i) The Secretary determines the median earnings for the students who completed the GE program during the applicable cohort period by—

(A) Creating a list of the students who completed the program during the applicable cohort period and providing it to the institution, as provided in paragraph (b)(8)(ii) of this section;

(B) Allowing the institution to correct the information about the students on the list, as provided in paragraph (b)(8)(iii) of this section;

(C) Obtaining from SSA or another Federal agency the median annual earnings of the students on the list, as provided in paragraph (b)(8)(iv) of this section; and

(D) Notifying the institution of the median annual earnings for the students on the list.

(ii) *Creating the list of students.* (A) The Secretary selects the students to be included on the list by—

(*1*) Identifying the students who were enrolled in the program and completed the program during the applicable cohort period from the data provided by the institution under § 668.411; and

(*2*) Indicating which students would be removed from the list under paragraph (b)(11) of this section and the specific reason for the exclusion.

(B) The Secretary provides the list to the institution and states which cohort period was used to select the students.

(iii) *Institutional corrections to the list.* (A) The Secretary presumes that the list of students and the identity information for those students are correct unless the institution provides evidence to the contrary that is satisfactory to the Secretary. The institution bears the burden of proof that the list is incorrect.

(B) No later than 45 days after the date the Secretary provides the list to the institution, the institution may—

(*1*) Provide evidence showing that a student should be included on or removed from the list pursuant to

paragraph (b)(11) of this section or otherwise; or

(*2*) Correct or update a student's identity information and the student's program attendance information provided for a student on the list.

(C) After the 45-day period expires, the institution may no longer seek to correct the list of students or revise the identity or program information of those students included on this list that the Secretary uses to determine the median earnings for students who completed the program.

(D) The Secretary considers the evidence provided by the institution and either accepts the correction or notifies the institution of the reasons for not accepting the correction. If the Secretary accepts the correction, the Secretary uses the corrected information to create the final list. The Secretary notifies the institution which students are included on the final list and the applicable cohort period used to create the list.

(iv) *Obtaining earnings data.* The Secretary submits the final list to SSA. For purposes of this section, SSA returns to the Secretary—

(A) The median earnings of the students on the list whom SSA has matched to SSA earnings data, in aggregate and not in individual form; and

(B) The number, but not the identities, of students on the list that SSA could not match.

(9) *Median earnings for students who withdrew from the program.* (i) The Secretary determines the median earnings for the students who withdrew from the program during the applicable cohort period by—

(A) Creating a list of the students who were enrolled in the program but withdrew from the program during the applicable cohort period and providing it to the institution, as provided in paragraph (b)(9)(ii) of this section;

(B) Allowing the institution to correct the information about the students on the list, as provided in paragraph (b)(9)(iii) of this section;

(C) Obtaining from SSA or another Federal agency the median annual earnings of the students on the list, as provided in paragraph (b)(9)(iv) of this section; and

(D) Notifying the institution of the median annual earnings for the students on the list.

(ii) *Creating the list of students.* (A) The Secretary selects the students to be included on the list by—

(*1*) Identifying the students who were enrolled in the program but withdrew from the program during the applicable cohort period from the data provided by the institution under § 668.411; and

(*2*) Indicating which students would be removed from the list under paragraph (b)(11) of this section and the specific reason for the exclusion.

(B) The Secretary provides the list to the institution and states which cohort period was used to select the students.

(iii) *Institutional corrections to the list.* (A) The Secretary presumes that the list of students and the identity information for those students are correct unless the institution provides evidence to the contrary that is satisfactory to the Secretary, in a format and process determined by the Secretary. The institution bears the burden of proof that the list is incorrect.

(B) No later than 45 days after the date the Secretary provides the list to the institution, the institution may—

(*1*) Provide evidence showing that a student should be included on or removed from the list pursuant to paragraph (b)(11) of this section or otherwise; or

(*2*) Correct or update a student's identity information and the student's program attendance information provided for a student on the list.

(C) After the 45-day period expires, the institution may no longer seek to correct the list of students or revise the identity or program information of those students included on this list that the Secretary uses to determine the median earnings for students who withdrew from the program.

(D) The Secretary considers the evidence provided by the institution and either accepts the correction or notifies the institution of the reasons for not accepting the correction. If the Secretary accepts the correction, the Secretary uses the corrected information to create the final list. The Secretary notifies the institution which students are included on the final list and the applicable cohort period used to create the list.

(iv) *Obtaining earnings data.* The Secretary submits the final list to SSA. For purposes of this section SSA returns to the Secretary—

(A) The median earnings of the students on the list whom SSA has matched to SSA earnings data, in aggregate and not in individual form; and

(B) The number, but not the identities, of students on the list that SSA could not match.

(10) *Median earnings for students who completed and withdrew from the program.* The Secretary calculates the median earnings for both the students who completed the program during the applicable cohort period and students who withdrew from the program during the applicable cohort period in accordance with paragraphs (b)(8) and (b)(9) of this section.

(11) *Exclusions from median earnings calculations.* The Secretary excludes a student from the calculation of the median earnings of a GE program if the Secretary determines that—

(i) One or more of the student's title IV loans were in a military-related deferment status at any time during the calendar year for which the Secretary obtains earnings information under this section;

(ii) One or more of the student's title IV loans are under consideration by the Secretary, or have been approved, for a discharge on the basis of the student's total and permanent disability, under 34 CFR 674.61, 682.402 or 685.212;

(iii) The student was enrolled in any other eligible program at the institution or at another institution during the calendar year for which the Secretary obtains earnings information under this section; or

(iv) The student died.

(12) *Median earnings not calculated.* The Secretary does not calculate the median earnings for a GE program if SSA does not provide the median earnings for the program.

(c) *Notification to institutions.* The Secretary notifies the institution of the—

(1) Draft completion, withdrawal, and repayment rates calculated under paragraph (b)(1) through (b)(3) of this section and the information the Secretary used to calculate those rates.

(2) Median loan debt of the students who completed the program, as described in paragraph (b)(4), the students who withdrew from the program, as described in paragraph (b)(5), and both the students who completed and withdrew from the program, as described in paragraph (b)(6) of this section, in each case during the applicable cohort period.

(3) Median earnings of the students who completed the program, as described in paragraph (b)(8), the students who withdrew from the program, as described in paragraph (b)(9), or both the students who completed the program and the students who withdrew from the program, as described in paragraph (b)(10) of this section, in each case during the applicable cohort period.

(d) *Challenges to completion rates, withdrawal rates, repayment rates, median loan debt, and median earnings.* (1) *Completion rates, withdrawal rates, repayment rates, and median loan debt.* (i) No later than 45 days after the Secretary notifies an institution of a GE

program's draft completion rate, withdrawal rate, repayment rate, and median loan debt, the institution may challenge the accuracy of the information that the Secretary used to calculate the draft rates and the draft median loan debt by submitting, in a form prescribed by the Secretary, evidence satisfactory to the Secretary demonstrating that the information was incorrect.

(ii) The Secretary considers any evidence provided by the institution challenging the accuracy of the information the Secretary used to calculate the rates and the median loan debt and notifies the institution whether the challenge is accepted or the reasons the challenge is not accepted. If the Secretary accepts the challenge, the Secretary uses the corrected data to calculate the rates or median loan debt.

(iii) An institution may challenge the Secretary's calculation of the completion rates, withdrawal rates, repayment rates, and median loan debt only once for an award year. An institution that does not timely challenge the rates or median loan debt waives any objection to the rates or median loan debt as stated in the notice.

(2) *Median earnings.* The Secretary does not consider any challenges to the median earnings calculated under this section.

(e) *Final rates, median loan debt, and median earnings.* (1) *Completion rates, withdrawal rates, repayment rates, and median loan debt.* (i) After expiration of the 45-day period, and subject to resolution of any challenge under paragraph (d)(1) of this section, a program's draft completion rate, withdrawal rate, repayment rate, and median loan debt constitute the final rates and median loan debt for that program.

(ii) The Secretary informs the institution of the final completion rate, withdrawal rate, repayment rate, and median loan debt for each of its GE programs by issuing a notice of determination.

(iii) After the Secretary provides the notice of determination, the Secretary may publish the final completion rate, withdrawal rate, repayment rate, and median loan debt.

(2) *Median earnings.* The median earnings of a program calculated by the Secretary under this section constitute the final median earnings for that program. After the Secretary provides the institution with the notice in paragraph (c) of this section, the Secretary may publish the final median earnings for the program.

(f) *Conditions for challenges.* An institution must ensure that any material that it submits to make any corrections or challenge under this section is complete, timely, accurate, and in a format acceptable to the Secretary as described in this subpart and, with respect to challenges under paragraph (d)(1) of this section, consistent with any instructions provided to the institution with the notice of its draft completion, withdrawal, and repayment rates and median loan debt.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.414 Certification requirements for GE programs.

(a) *Transitional certification for existing programs.* (1) Except as provided in paragraph (a)(2) of this section, an institution must provide to the Secretary no later than December 31 of the year in which this regulation takes effect, in accordance with procedures established by the Secretary, a certification signed by its most senior executive officer that each of its currently eligible GE programs meets the requirements of paragraph (d) of this section. The Secretary accepts the certification as an addendum to the institution's program participation agreement (PPA).

(2) If an institution makes the certification in its PPA pursuant to paragraph (b) of this section between July 1 and December 31 of the year in which this regulation takes effect, it is not required to provide the transitional certification under this paragraph.

(b) *PPA certification.* As a condition of its continued participation in the title IV, HEA programs, an institution must certify in its PPA with the Secretary under § 668.14 that each of its currently eligible GE programs meets the requirements of paragraph (d) of this section.

(c) *Establishing eligibility and disbursing funds.* (1) An institution establishes the eligibility for title IV, HEA program funds of a GE program by updating the list of the institution's eligible programs maintained by the Department to include that program, as provided under 34 CFR 600.21(a)(11)(i). By updating the list of the institution's eligible programs, the institution affirms that the program satisfies the certification requirements in paragraph (d) of this section. Except as provided in paragraph (c)(2) of this section, after the institution updates its list of eligible programs, the institution may disburse title IV, HEA program funds to students enrolled in that program.

(2) An institution may not update its list of eligible programs to include a GE program, or a substantially similar program, that was subject to the three-year loss of eligibility under § 668.410(b)(2), until that three-year period expires.

(d) *GE program eligibility certifications.* An institution certifies, at the time and in the form specified in this section, that:

(1) Each eligible GE program it offers is approved by a recognized accrediting agency or is otherwise included in the institution's accreditation by its recognized accrediting agency, or, if the institution is a public postsecondary vocational institution, the program is approved by a recognized State agency for the approval of public postsecondary vocational education in lieu of accreditation;

(2) Each eligible GE program it offers is programmatically accredited, if such accreditation is required by a Federal governmental entity or by a governmental entity in the State in which the institution is located or by any State within the institution's MSA; and

(3) For the State in which the institution is located and in all other States within the institution's MSA, each eligible program it offers satisfies the licensure or certification requirements of those States so that a student who completes the program and seeks employment in those States qualifies to take any licensure or certification exam that is needed for the student to practice or find employment in an occupation that the program prepares students to enter.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094, 1099c)

§ 668.415 Severability.

If any provision of this subpart or its application to any person, act, or practice is held invalid, the remainder of the subpart or the application of its provisions to any person, act, or practice shall not be affected thereby.

(Authority: 20 U.S.C. 1001, 1002, 1088)

■ 12. Add subpart R to read as follows:

Subpart R—Program Cohort Default Rate

Sec.

668.500 Purpose of this subpart.
668.501 Definitions of terms used in this subpart.
668.502 Calculating and applying program cohort default rates.
668.503 Determining program cohort default rates for GE programs at institutions that have undergone a change in status.
668.504 Draft program cohort default rates and your ability to challenge before official program cohort default rates are issued.
668.505 Notice of the official program cohort default rate of a GE program.

668.506 Consequences of program cohort default rates on the GE program's eligibility to participate in the title IV, HEA programs.
668.507 Preventing evasion of the consequences of program cohort default rates.
668.508 General requirements for adjusting official program cohort default rates and for appealing their consequences.
668.509 Uncorrected data adjustments.
668.510 New data adjustments.
668.511 Erroneous data appeals.
668.512 Loan servicing appeals.
668.513 Economically disadvantaged appeals.
668.514 Participation rate index appeals.
668.515 Average rates appeals.
668.516 Thirty-or-fewer borrowers appeals.
668.517 [Reserved]

Subpart R—Program Cohort Default Rate

§ 668.500 Purpose of this subpart.

General. The program cohort default rate is a measure we use to determine the eligibility of a GE program under subpart Q of this part. This subpart describes how program cohort default rates are calculated, some of the consequences of program cohort default rates, and how you may request changes to your program cohort default rates or appeal their consequences. Under this subpart, you submit a ''challenge'' after you receive your draft program cohort default rate, and you request an ''adjustment'' or ''appeal'' after your official program cohort default rate is published.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.501 Definitions of terms used in this subpart.

We use the following definitions in this subpart:

(a) *Cohort.* Your cohort is a group of borrowers used to determine your program cohort default rate. The method for identifying the borrowers in a cohort is provided in § 668.502(b).

(b) *Data manager.* (1) For FFELP loans held by a guaranty agency or lender, the guaranty agency is the data manager.

(2) For FFELP loans that we hold, we are the data manager.

(3) For Direct Loan Program loans, the Direct Loan Servicer, as defined in 34 CFR 685.102, is the data manager.

(c) *Days.* In this subpart, ''days'' means calendar days.

(d) *Default.* A borrower is considered to be in default for program cohort default rate purposes under the rules in § 668.502(c).

(e) *Draft program cohort default rate.* Your draft program cohort default rate is a rate we issue, for your review, before we issue your official program cohort default rate. A draft program cohort default rate is used only for the purposes described in § 668.504.

(f) *Entering repayment.* (1) Except as provided in paragraphs (f)(2) and (f)(3) of this section, loans are considered to enter repayment on the dates described in 34 CFR 682.200 (under the definition of ''repayment period'') and in 34 CFR 685.207, as applicable.

(2) A Federal SLS loan is considered to enter repayment—

(i) At the same time the borrower's Federal Stafford loan enters repayment, if the borrower received the Federal SLS loan and the Federal Stafford loan during the same period of continuous enrollment; or

(ii) In all other cases, on the day after the student ceases to be enrolled at an institution on at least a half-time basis in an educational program leading to a degree, certificate, or other recognized educational credential.

(3) For the purposes of this subpart, a loan is considered to enter repayment on the date that a borrower repays it in full, if the loan is paid in full before the loan enters repayment under paragraphs (f)(1) or (f)(2) of this section.

(g) *Fiscal year.* A fiscal year begins on October 1 and ends on the following September 30. A fiscal year is identified by the calendar year in which it ends.

(h) *GE program.* An educational program offered by an institution under § 668.8(c)(3) or (d) and identified by a combination of the institution's six-digit Office of Postsecondary Education ID (OPEID) number, the program's six-digit CIP code as assigned by the institution or determined by the Secretary, and the program's credential level, as defined in § 668.402.

(i) *Loan record detail report.* The loan record detail report is a report that we produce. It contains the data used to calculate your draft or official program cohort default rate.

(j) *Official program cohort default rate.* Your official program cohort default rate is the program cohort default rate that we publish for you under § 668.505.

(k) *We.* We are the Department, the Secretary, or the Secretary's designee.

(l) *You.* You are an institution. We consider each reference to ''you'' to apply separately to the institution with respect to each of its GE programs.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.502 Calculating and applying program cohort default rates.

(a) *General.* This section describes the four steps that we follow to calculate and apply your program cohort default rate for a fiscal year:

(1) First, under paragraph (b) of this section, we identify the borrowers in your GE program's cohort for the fiscal year. If the total number of borrowers in that cohort is fewer than 30, we also identify the borrowers in your cohorts for the 2 most recent prior fiscal years.

(2) Second, under paragraph (c) of this section, we identify the borrowers in the cohort (or cohorts) who are considered to be in default by the end of the second fiscal year following the fiscal year those borrowers entered repayment. If more than one cohort will be used to calculate your program cohort default rate, we identify defaulted borrowers separately for each cohort.

(3) Third, under paragraph (d) of this section, we calculate your program cohort default rate.

(4) Fourth, we apply your program cohort default rate to your program at all of your locations—

(i) As you exist on the date you receive the notice of your official program cohort default rate; and

(ii) From the date on which you receive the notice of your official program cohort default rate until you receive our notice that the program cohort default rate no longer applies.

(b) *Identify the borrowers in a cohort.* (1) Except as provided in paragraph (b)(3) of this section, your cohort for a fiscal year consists of all of your current and former students who, during that fiscal year, entered repayment on any Federal Stafford Loan, Federal SLS Loan, Direct Subsidized Loan, or Direct Unsubsidized Loan that they received to enroll in the GE program, or on the portion of a loan made under the Federal Consolidation Loan Program or the Federal Direct Consolidation Loan Program that is used to repay those loans.

(2) A borrower may be included in more than one of your cohorts and may be included in the cohorts of more than one institution in the same fiscal year.

(3) A TEACH Grant that has been converted to a Federal Direct Unsubsidized Loan is not considered for the purpose of calculating and applying program cohort default rates.

(c) *Identify the borrowers in a cohort who are in default.* (1) Except as provided in paragraph (c)(2) of this section, a borrower in a cohort for a fiscal year is considered to be in default if, before the end of the second fiscal year following the fiscal year the borrower entered repayment—

(i) The borrower defaults on any FFELP loan that was used to include the borrower in the cohort or on any Federal Consolidation Loan Program loan that repaid a loan that was used to include the borrower in the cohort (however, a borrower is not considered to be in default on a FFELP loan unless a claim

for insurance has been paid on the loan by a guaranty agency or by us);

(ii) The borrower fails to make an installment payment, when due, on any Direct Loan Program loan that was used to include the borrower in the cohort or on any Federal Direct Consolidation Loan Program loan that repaid a loan that was used to include the borrower in the cohort, and the borrower's failure persists for 360 days;

(iii) You or your owner, agent, contractor, employee, or any other affiliated entity or individual make a payment to prevent a borrower's default on a loan that is used to include the borrower in that cohort; or

(iv) The borrower fails to make an installment payment, when due, on a Federal Stafford Loan that is held by the Secretary or a Federal Consolidation Loan that is held by the Secretary and that was used to repay a Federal Stafford Loan, if such Federal Stafford Loan or Federal Consolidation Loan was used to include the borrower in the cohort, and the borrower's failure persists for 360 days.

(2) A borrower is not considered to be in default based on a loan that is, before the end of the second fiscal year following the fiscal year in which it entered repayment—

(i) Rehabilitated under 34 CFR 682.405 or 34 CFR 685.211(e); or

(ii) Repurchased by a lender because the claim for insurance was submitted or paid in error.

(d) *Calculate the program cohort default rate.* Except as provided in § 668.503, if there are—

(1)(i) Thirty or more borrowers in your cohort for a fiscal year, your program cohort default rate is the percentage that is calculated by—

(ii) Dividing the number of borrowers in the cohort who are in default, as determined under paragraph (c), by the number of borrowers in the cohort, as determined under paragraph (b) of this section.

(2)(i) Fewer than 30 borrowers in your cohort for a fiscal year, your program cohort default rate is the percentage that is calculated by—

(ii) Dividing the total number of borrowers in that program cohort and in the two most recent prior program cohorts who are in default, as determined for each program cohort under paragraph (c) of this section, by the total number of borrowers in that program cohort and the two most recent prior program cohorts, as determined for each program cohort under paragraph (b).

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.503 Determining program cohort default rates for GE programs at institutions that have undergone a change in status.

(a) *General.* (1) If you undergo a change in status identified in this section, the program cohort default rate of a GE program you offer is determined under this section.

(2) In determining program cohort default rates under this section, the date of a merger, acquisition, or other change in status is the date the change occurs.

(3) A change in status may affect your GE program's eligibility to participate in title IV, HEA programs under § 668.506 or § 668.507.

(4) If the program cohort default rate of a program offered by another institution is applicable to you under this section with respect to a program you offer, you may challenge, request an adjustment, or submit an appeal for the program cohort default rate under the same requirements that would be applicable to the other institution under §§ 668.504 and 668.508.

(b) *Acquisition or merger of institutions.* If you offer a GE program and your institution acquires, or was created by the merger of, one or more institutions that participated independently in the title IV, HEA programs immediately before the acquisition or merger and that offered the same GE program, as identified by its 6-digit CIP code and credential level—

(1) Those program cohort default rates published for a GE program offered by any of these institutions before the date of the acquisition or merger are attributed to the GE program after the merger or acquisition; and

(2) Beginning with the first program cohort default rate published after the date of the acquisition or merger, the program cohort default rates for that GE program are determined by including in the calculation under § 668.502 the borrowers who were enrolled in that GE program from each institution that offered that program and that was involved in the acquisition or merger.

(c) [Reserved]

(d) *Branches or locations becoming institutions.* If you are a branch or location of an institution that is participating in the title IV, HEA programs, and you become a separate, new institution for the purposes of participating in those programs—

(1) The program cohort default rates published for a GE program before the date of the change for your former parent institution are also applicable to that GE program when you offer that program;

(2) Beginning with the first program cohort default rate published after the date of the change, the program cohort default rates for a GE program for the next three fiscal years are determined by including the applicable borrowers who were enrolled in the GE program from your institution and from your former parent institution (including all of its locations) in the calculation under § 668.502; and

(3) [Reserved].

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.504 Draft program cohort default rates and your ability to challenge before official program cohort default rates are issued.

(a) *General.* (1) We notify you of the draft program cohort default rate of a GE program before the official program cohort default rate of the GE program is calculated. Our notice includes the loan record detail report for the draft program cohort default rate.

(2) Regardless of the number of borrowers included in the program cohort, the draft program cohort default rate of a GE program is always calculated using data for that fiscal year alone, using the method described in § 668.502(d)(1).

(3) The draft program cohort default rate of a GE program and the loan record detail report are not considered public information and may not be otherwise voluntarily released to the public by a data manager.

(4) Any challenge you submit under this section and any response provided by a data manager must be in a format acceptable to us. This acceptable format is described in materials that we provide to you. If your challenge does not comply with these requirements, we may deny your challenge.

(b) *Incorrect data challenges.* (1) You may challenge the accuracy of the data included on the loan record detail report by sending a challenge to the relevant data manager, or data managers, within 45 days after you receive the data. Your challenge must include—

(i) A description of the information in the loan record detail report that you believe is incorrect; and

(ii) Documentation that supports your contention that the data are incorrect.

(2) Within 30 days after receiving your challenge, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation that supports the data manager's position.

(3) If your data manager concludes that draft data in the loan record detail report are incorrect, and we agree, we use the corrected data to calculate your program cohort default rate.

(4) If you fail to challenge the accuracy of data under this section, you cannot contest the accuracy of those data in an uncorrected data adjustment, under § 668.509, or in an erroneous data appeal, under § 668.511.

(c) *Participation rate index challenges.* (1)(i) [Reserved]

(ii) You may challenge an anticipated loss of eligibility based on three consecutive program cohort default rates of 30 percent or greater, if your participation rate index is equal to or less than 0.0625 for any of those three program cohorts' fiscal years.

(iii) [Reserved]

(2) For a participation rate index challenge, your participation rate index is calculated as described in § 668.514(b), except that—

(i) The draft program cohort default rate is considered to be your most recent program cohort default rate; and

(ii) If the program cohort used to calculate the draft program cohort default rate included fewer than 30 borrowers, you may calculate your participation rate index for that fiscal year using either your most recent draft program cohort default rate or the average rate that would be calculated for that fiscal year, using the method described in § 668.502(d)(2).

(3) You must send your participation rate index challenge, including all supporting documentation, to us within 45 days after you receive your draft program cohort default rate.

(4) We notify you of our determination on your participation rate index challenge before your official program cohort default rate is published.

(5) A GE program does not lose eligibility under § 668.506 if we determine that your participation rate index challenge is meritorious, and the GE program will not lose eligibility under § 668.506 when the next official program cohort default rate for the GE program is published. A successful challenge that is based on the draft program cohort default rate does not excuse the program from loss of eligibility on any other ground. However, if a successful challenge under paragraph (c)(1)(ii) of this section is based on a prior, official program cohort default rate for the GE program, and not on the draft program cohort default rate for the program, we also excuse the GE program from any subsequent loss of eligibility under § 668.506 that would be based on that official program cohort default rate.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.505 Notice of the official program cohort default rate of a GE program.

(a) We notify you of the official cohort default rate of a GE program after we calculate it. After we send our notice to you, we publish a list of program cohort default rates for all institutions.

(b) If one or more borrowers who were enrolled in a GE program entered repayment in the fiscal year for which the rate is calculated, or the GE program is subject to loss of eligibility under § 668.506, or if we believe you will have an official program cohort default rate for a GE program calculated as an average rate, you will receive a loan record detail report as part of your notification package for that program.

(c) You have five business days, from the date of our notification, as posted on the Department's Web site, to report any problem with receipt of the notification package.

(d) Except as provided in paragraph (e) of this section, timelines for submitting challenges, adjustments, and appeals begin on the sixth business day following the date of the notification package that is posted on the Department's Web site.

(e) If you timely report a problem with receipt of your notification package under paragraph (c) of this section and the Department agrees that the problem was not caused by you, the Department will extend the challenge, appeal, and adjustment deadlines and timeframes to account for a re-notification package.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.506 Consequences of program cohort default rates on the GE program's eligibility to participate in the title IV, HEA programs.

(a) *End of participation.* (1) A GE program loses eligibility as provided in § 668.403(c)(2).

(2) [Reserved]

(b) *Length of period of ineligibility.* A GE program that loses eligibility under this section continues to be ineligible as provided in § 668.410(b).

(c) [Reserved]

(d) [Reserved]

(e) *Requests for adjustments and appeals.* (1) A loss of eligibility under this section does not take effect while a request for adjustment or appeal, as listed in § 668.508(a), is pending, provided your request for adjustment or appeal is complete, timely, accurate, and in the required format.

(2) Eligibility of a GE program that is continued under this section ends if we determine that none of the requests for adjustments and appeals you have submitted qualify the GE program for continued eligibility under § 668.508. Loss of eligibility takes effect on the date that you receive notice of our determination on your last pending request for adjustment or appeal.

(3) The GE program does not lose eligibility if we determine that your request for adjustment or appeal for the GE program meets all requirements of this subpart.

(4) To avoid liabilities you might otherwise incur under paragraph (f) of this section, you may choose to suspend your participation in the FFEL and Direct Loan programs during the adjustment or appeal process.

(f) *Liabilities during the adjustment or appeal process.* If you continued to have the GE program participate in the Direct Loan Program under paragraph (e)(1) of this section, and we determine that none of the requests for adjustment or appeals qualify the program for continued eligibility—

(1) For any Direct Loan Program loan that you originated and disbursed for borrowers in the GE program more than 30 days after you received the notice of program cohort default rate for that GE program, we estimate the costs of those loans;

(2) We exclude from this estimate any amount attributable to funds that you disbursed more than 45 days after you submitted your completed appeal to us;

(3) We notify you of the estimated amount; and

(4) Within 45 days after you receive our notice of the estimated amount, you must pay us that amount, unless—

(i) You file an appeal under the procedures established in subpart H of this part (for the purposes of subpart H of this part, our notice of the estimate is considered to be a final program review determination); or

(ii) We permit a longer repayment period.

(g) [Reserved]

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.507 Preventing evasion of the consequences of program cohort default rates.

In calculating the program cohort default rate of a GE program, the Secretary may include loan debt incurred by the borrower for enrolling in GE programs at other institutions if the institution and the other institutions are under common ownership or control, as determined by the Secretary in accordance with 34 CFR 600.31.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.508 General requirements for adjusting official program cohort default rates and for appealing their consequences.

(a) *Remaining eligible.* A GE program does not lose eligibility under § 668.506 if—

(1) We recalculate the program cohort default rate for a program, and it is below the percentage threshold for loss of eligibility under § 668.506 as the result of—

(i) An uncorrected data adjustment submitted under this section and § 668.509;

(ii) A new data adjustment submitted under this section and § 668.510;

(iii) An erroneous data appeal submitted under this section and § 668.511; or

(iv) A loan servicing appeal submitted under this section and § 668.512; or

(2) The GE program meets the requirements for—

(i) An economically disadvantaged appeal submitted under this section and § 668.513;

(ii) A participation rate index appeal submitted under this section and § 668.514;

(iii) An average rates appeal submitted under this section and § 668.515; or

(iv) A thirty-or-fewer borrowers appeal submitted under this section and § 668.516.

(b) *Limitations on your ability to dispute a program cohort default rate.* (1) You may not dispute the calculation of a program cohort default rate except as described in this subpart.

(2) You may not request an adjustment, or appeal a program cohort default rate, under § 668.509, § 668.510, § 668.511, or § 668.512, more than once.

(3) You may not request an adjustment, or appeal a program cohort default rate, under § 668.509, § 668.510, § 668.511, or § 668.512, if the GE program previously lost eligibility under § 668.506 based entirely or partially on that program cohort default rate.

(c) *Content and format of requests for adjustments and appeals.* We may deny your request for adjustment or appeal if it does not meet the following requirements:

(1) All appeals, notices, requests, independent auditor's opinions, management's written assertions, and other correspondence that you are required to send under this subpart must be complete, timely, accurate, and in a format acceptable to us. This acceptable format is described in materials that we provide to you.

(2) Your completed request for adjustment or appeal must include—

(i) All of the information necessary to substantiate your request for adjustment or appeal; and

(ii) A certification by your chief executive officer, under penalty of perjury, that all the information you provide is true and correct.

(d) *Our copies of your correspondence.* Whenever you are required by this subpart to correspond with a party other than us, you must send us a copy of your correspondence within the same time deadlines. However, you are not required to send us copies of documents that you received from us originally.

(e) *Requirements for data managers' responses.* (1) Except as otherwise provided in this subpart, if this subpart requires a data manager to correspond with any party other than us, the data manager must send us a copy of the correspondence within the same time deadlines.

(2) If a data manager sends us correspondence under this subpart that is not in a format acceptable to us, we may require the data manager to revise that correspondence's format, and we may prescribe a format for that data manager's subsequent correspondence with us.

(f) *Our decision on your request for adjustment or appeal.* (1) We determine whether your request for an adjustment or appeal is in compliance with this subpart.

(2) In making our decision for an adjustment, under § 668.509 or § 668.510, or an appeal, under § 668.511 or § 668.512—

(i) We presume that the information provided to you by a data manager is correct unless you provide substantial evidence that shows the information is not correct; and

(ii) If we determine that a data manager did not provide the necessary clarifying information or legible records in meeting the requirements of this subpart, we presume that the evidence that you provide to us is correct unless it is contradicted or otherwise proven to be incorrect by information we maintain.

(3) Our decision is based on the materials you submit under this subpart. We do not provide an oral hearing.

(4) We notify you of our decision—

(i) If you request an adjustment or appeal because you are subject to a sanction under § 668.410 or file an economically disadvantaged appeal under § 668.513(a)(2), within 45 days after we receive your completed request for an adjustment or appeal; or

(ii) In all other cases, before we notify you of your next official program cohort default rate.

(5) You may not seek judicial review of our determination of a program cohort default rate until we issue our decision on all pending requests for adjustments or appeals for that program cohort default rate.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.509 Uncorrected data adjustments.

(a) *Eligibility.* You may request an uncorrected data adjustment for a GE program's most recent cohort of borrowers, used to calculate the most recent official program cohort default rate, if in response to your challenge under § 668.504(b), a data manager agreed correctly to change the data, but the changes are not reflected in your official program cohort default rate.

(b) *Deadlines for requesting an uncorrected data adjustment.* You must send us a request for an uncorrected data adjustment, including all supporting documentation, within 30 days after you receive your loan record detail report from us.

(c) *Determination.* We recalculate your program cohort default rate, based on the corrected data, and correct the rate that is publicly released if we determine that—

(1) In response to your challenge under § 668.504(b), a data manager agreed to change the data;

(2) The changes described in paragraph (c)(1) of this section are not reflected in your official program cohort default rate; and

(3) We agree that the data are incorrect.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.510 New data adjustments.

(a) *Eligibility.* You may request a new data adjustment for the most recent program cohort of borrowers, used to calculate the most recent official program cohort default rate for a GE program, if—

(1) A comparison of the loan record detail reports that we provide to you for the draft and official program cohort default rates shows that the data have been newly included, excluded, or otherwise changed; and

(2) You identify errors in the data described in paragraph (a)(1) of this section that are confirmed by the data manager.

(b) *Deadlines for requesting a new data adjustment.* (1) You must send to the relevant data manager, or data managers, and us a request for a new data adjustment, including all supporting documentation, within 15 days after you receive your loan record detail report from us.

(2) Within 20 days after receiving your request for a new data adjustment, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation used to support the data manager's position.

(3) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for a new data adjustment for that loan. We respond to your request as set forth under paragraph (b)(2) of this section.

(4) Within 15 days after receiving incomplete or illegible records or data from a data manager, you must send a request for replacement records or clarification of data to the data manager and us.

(5) Within 20 days after receiving your request for replacement records or clarification of data, the data manager must—

(i) Replace the missing or illegible records;

(ii) Provide clarifying information; or

(iii) Notify you and us that no clarifying information or additional or improved records are available.

(6) You must send us your completed request for a new data adjustment, including all supporting documentation—

(i) Within 30 days after you receive the final data manager's response to your request or requests; or

(ii) If you are also filing an erroneous data appeal or a loan servicing appeal, by the latest of the filing dates required in paragraph (b)(6)(i) of this section or in § 668.511(b)(6)(i) or § 668.512(c)(10)(i).

(c) *Determination.* If we determine that incorrect data were used to calculate your program cohort default rate, we recalculate your program cohort default rate based on the correct data and make corrections to the rate that is publicly released.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.511 Erroneous data appeals.

(a) *Eligibility.* Except as provided in § 668.508(b), you may appeal the calculation of a program cohort default rate upon which loss of eligibility under § 668.506 is based if—

(1) You dispute the accuracy of data that you previously challenged on the basis of incorrect data, under § 668.504(b); or

(2) A comparison of the loan record detail reports that we provide to you for the draft and official program cohort default rates shows that the data have been newly included, excluded, or otherwise changed, and you dispute the accuracy of that data.

(b) *Deadlines for submitting an appeal.* (1) You must send a request for verification of data errors to the relevant data manager, or data managers, and to us within 15 days after you receive the notice of your loss of eligibility. Your request must include a description of the information in the program cohort default rate data that you believe is incorrect and all supporting documentation that demonstrates the error.

(2) Within 20 days after receiving your request for verification of data errors, the data manager must send you and us a response that—

(i) Addresses each of your allegations of error; and

(ii) Includes the documentation used to support the data manager's position.

(3) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for verification of that loan's data errors. Your request must include a description of the information in the program cohort default rate data that you believe is incorrect and all supporting documentation that demonstrates the error. We respond to your request as set forth under paragraph (b)(2) of this section.

(4) Within 15 days after receiving incomplete or illegible records or data, you must send a request for replacement records or clarification of data to the data manager and us.

(5) Within 20 days after receiving your request for replacement records or clarification of data, the data manager must—

(i) Replace the missing or illegible records;

(ii) Provide clarifying information; or

(iii) Notify you and us that no clarifying information or additional or improved records are available.

(6) You must send your completed appeal to us, including all supporting documentation—

(i) Within 30 days after you receive the final data manager's response to your request; or

(ii) If you are also requesting a new data adjustment or filing a loan servicing appeal, by the latest of the filing dates required in paragraph (b)(6)(i) of this section or in § 668.510(b)(6)(i) or § 668.512(c)(10)(i).

(c) *Determination.* If we determine that incorrect data were used to calculate your program cohort default rate, we recalculate your program cohort default rate based on the correct data and correct the rate that is publicly released.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.512 Loan servicing appeals.

(a) *Eligibility.* Except as provided in § 668.508(b), you may appeal, on the basis of improper loan servicing or collection, the calculation of—

(1) The most recent program cohort default rate for a GE program; or

(2) Any program cohort default rate upon which a loss of eligibility under § 668.506 is based.

(b) *Improper loan servicing.* For the purposes of this section, a default is considered to have been due to improper loan servicing or collection only if the borrower did not make a payment on the loan and you prove that the responsible party failed to perform one or more of the following activities, if that activity applies to the loan:

(1) Send at least one letter (other than the final demand letter) urging the borrower to make payments on the loan.

(2) Attempt at least one phone call to the borrower.

(3) Send a final demand letter to the borrower.

(4) For a FFELP loan held by us or for a Direct Loan Program loan, document that skip tracing was performed if the applicable servicer determined that it did not have the borrower's current address.

(5) For an FFELP loan only—

(i) Submit a request for preclaims or default aversion assistance to the guaranty agency; and

(ii) Submit a certification or other documentation that skip tracing was performed to the guaranty agency.

(c) *Deadlines for submitting an appeal.* (1) If the loan record detail report was not included with your official program cohort default rate notice, you must request it within 15 days after you receive the notice of your official program cohort default rate.

(2) You must send a request for loan servicing records to the relevant data manager, or data managers, and to us within 15 days after you receive your loan record detail report from us. If the data manager is a guaranty agency, your request must include a copy of the loan record detail report.

(3) Within 20 days after receiving your request for loan servicing records, the data manager must—

(i) Send you and us a list of the borrowers in your representative sample, as described in paragraph (d) of this section (the list must be in social security number order, and it must include the number of defaulted loans included in the program cohort for each listed borrower);

(ii) Send you and us a description of how your representative sample was chosen; and

(iii) Either send you copies of the loan servicing records for the borrowers in your representative sample and send us a copy of its cover letter indicating that the records were sent, or send you and us a notice of the amount of its fee for providing copies of the loan servicing records.

(4) The data manager may charge you a reasonable fee for providing copies of loan servicing records, but it may not charge more than $10 per borrower file. If a data manager charges a fee, it is not required to send the documents to you until it receives your payment of the fee.

(5) If the data manager charges a fee for providing copies of loan servicing records, you must send payment in full to the data manager within 15 days after you receive the notice of the fee.

(6) If the data manager charges a fee for providing copies of loan servicing records, and—

(i) You pay the fee in full and on time, the data manager must send you, within 20 days after it receives your payment, a copy of all loan servicing records for each loan in your representative sample (the copies are provided to you in hard copy format unless the data manager and you agree that another format may be used), and it must send us a copy of its cover letter indicating that the records were sent; or

(ii) You do not pay the fee in full and on time, the data manager must notify you and us of your failure to pay the fee and that you have waived your right to challenge the calculation of your program cohort default rate based on the data manager's records. We accept that determination unless you prove that it is incorrect.

(7) Within 15 days after receiving a guaranty agency's notice that we hold an FFELP loan about which you are inquiring, you must send us your request for the loan servicing records for that loan. We respond to your request under paragraph (c)(3) of this section.

(8) Within 15 days after receiving incomplete or illegible records, you must send a request for replacement records to the data manager and us.

(9) Within 20 days after receiving your request for replacement records, the data manager must either—

(i) Replace the missing or illegible records; or

(ii) Notify you and us that no additional or improved copies are available.

(10) You must send your appeal to us, including all supporting documentation—

(i) Within 30 days after you receive the final data manager's response to your request for loan servicing records; or

(ii) If you are also requesting a new data adjustment or filing an erroneous data appeal, by the latest of the filing dates required in paragraph (c)(10)(i) of this section or in § 668.510(b)(6)(i) or § 668.511(b)(6)(i).

(d) *Representative sample of records.* (1) To select a representative sample of records, the data manager first identifies all of the borrowers for whom it is responsible and who had loans that were considered to be in default in the calculation of the program cohort default rate you are appealing.

(2) From the group of borrowers identified under paragraph (d)(1) of this section, the data manager identifies a sample that is large enough to derive an estimate, acceptable at a 95 percent confidence level with a plus or minus 5 percent confidence interval, for use in determining the number of borrowers who should be excluded from the calculation of the program cohort default rate due to improper loan servicing or collection.

(e) *Loan servicing records.* Loan servicing records are the collection and payment history records—

(1) Provided to the guaranty agency by the lender and used by the guaranty agency in determining whether to pay a claim on a defaulted loan; or

(2) Maintained by our Direct Loan Servicer that are used in determining your program cohort default rate.

(f) *Determination.* (1) We determine the number of loans, included in your representative sample of loan servicing records, that defaulted due to improper loan servicing or collection, as described in paragraph (b) of this section.

(2) Based on our determination, we use a statistically valid methodology to exclude the corresponding percentage of borrowers from both the numerator and denominator of the calculation of the program cohort default rate for the GE program, and correct the rate that is publicly released.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.513 Economically disadvantaged appeals.

(a) *General.* As provided in this section you may appeal, for a GE program, a loss of eligibility under § 668.506.

(b) *Eligibility.* You may appeal under this section if an independent auditor's opinion certifies that the low income rate, as defined in paragraph (c) of this section, for the GE program is two-thirds or more and—

(1) The program is an associate, baccalaureate, graduate, or professional degree, and its completion rate, as defined in paragraph (d) of this section, is 70 percent or more; or

(2) The program is not an associate, baccalaureate, graduate, or professional degree, and the placement rate, as defined in paragraph (e) of this section, for the program is 44 percent or more.

(c) *Low income rate.* (1) The low income rate for a GE program is the percentage of students enrolled in the program, as described in paragraph (c)(2) of this section, who—

(i) For an award year that overlaps the 12-month period selected under paragraph (c)(2) of this section, have an expected family contribution, as defined in 34 CFR 690.2, that is equal to or less than the largest expected family contribution that would allow a student to receive one-half of the maximum Federal Pell Grant award, regardless of the student's enrollment status or cost of attendance; or

(ii) For a calendar year that overlaps the 12-month period selected under paragraph (c)(2) of this section, have an adjusted gross income that, when added to the adjusted gross income of the student's parents (if the student is a dependent student) or spouse (if the student is a married independent student), is less than the amount listed in the Department of Health and Human Services poverty guideline for the size of the student's family unit.

(2) The students who are used to determine the low income rate for a GE program include only students who were enrolled on at least a half-time basis in the GE program at your institution during any part of a 12-month period that ended during the 6 months immediately preceding the program cohort's fiscal year.

(d) *Completion rate.* (1) For purposes of this subpart, the completion rate for a GE program is the percentage of students enrolled in the program, as described in paragraph (d)(2) of this section, who—

(i) Completed the GE program in which they were enrolled;

(ii) Transferred from your institution to a higher level educational program;

(iii) Remained enrolled and are making satisfactory progress toward completion of their educational programs at the end of the same 12-month period used to calculate the low income rate; or

(iv) Entered active duty in the Armed Forces of the United States within 1 year after their last date of attendance at your institution.

(2) The students who are used to determine the completion rate for a GE program include only regular students who were—

(i) Initially enrolled on a full-time basis in the GE program; and

(ii) Originally scheduled to complete the GE program during the same 12-month period used to calculate the low income rate for the GE program.

(e) *Placement rate.* (1) Except as provided in paragraph (e)(2), for purposes of this subpart the placement rate for a GE program is the percentage of students enrolled in the program, as described in paragraphs (e)(3) and (e)(4) of this section, who—

(i) Are employed, in an occupation for employment in which the GE program was offered, on the date following 1 year after their last date of attendance at your institution;

(ii) Were employed for at least 13 weeks, in the occupation for which the GE program was offered, between the date they enrolled at your institution and the first date that is more than a year after their last date of attendance at your institution; or

(iii) Entered active duty in the Armed Forces of the United States within 1 year after their last date of attendance in the GE program.

(2) For the purposes of this section, a former student is not considered to have been employed based on any employment by your institution.

(3) The students who are used to determine the placement rate of a GE program include only former students who—

(i) Were initially enrolled in the GE program on at least a half-time basis;

(ii) Were originally scheduled, at the time of enrollment, to complete the GE program during the same 12-month period used to calculate the low income rate; and

(iii) Remained in the GE program beyond the point at which a student would have received a 100 percent tuition refund from you.

(4) A student is not included in the calculation of the placement rate of a GE program if that student, on the date that is 1 year after the student's originally scheduled completion date, remains enrolled in the same program and is making satisfactory progress.

(f) *Scheduled to complete.* In calculating a completion or placement rate under this section, the date on which a student is originally scheduled to complete a GE program is based on—

(1) For a student who is initially enrolled full-time, the amount of time specified in your enrollment contract, catalog, or other materials for completion of the GE program by a full-time student; or

(2) For a student who is initially enrolled less than full-time, the amount of time that it would take the student to complete the GE program if the student remained at that level of enrollment throughout the program.

(g) *Deadline for submitting an appeal.* (1) Within 30 days after you receive the notice of loss of eligibility under § 668.506 you must send us your management's written assertion, as described in the Program Cohort Default Rate Guide.

(2) Within 60 days after you receive the notice of your loss of eligibility, you must send us the independent auditor's opinion described in paragraph (h) of this section.

(h) *Independent auditor's opinion.* (1) The independent auditor's opinion must state whether your management's written assertion, as you provided it to the auditor and to us, meets the requirements for an economically disadvantaged appeal and is fairly stated in all material respects.

(2) The engagement that forms the basis of the independent auditor's opinion must be an examination-level compliance attestation engagement performed in accordance with—

(i) The American Institute of Certified Public Accountants' (AICPA) Statement on Standards for Attestation Engagements, Compliance Attestation (AICPA, Professional Standards, vol. 1, AT sec. 500), as amended (these standards may be obtained by calling the AICPA's order department, at 1–888–777–7077); and

(ii) Government Auditing Standards issued by the Comptroller General of the United States.

(i) *Determination.* The GE program does not lose eligibility under § 668.506 if—

(1) Your independent auditor's opinion agrees that you meet the requirements for an economically disadvantaged appeal; and

(2) We determine that the independent auditor's opinion and your management's written assertion—

(i) Meet the requirements for an economically disadvantaged appeal for the GE program; and

(ii) Are not contradicted or otherwise proven to be incorrect by information we maintain, to an extent that would render the independent auditor's opinion unacceptable.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.514 Participation rate index appeals.

(a) *Eligibility.*

(1) [Reserved]

(2) You may appeal a loss of eligibility under § 668.506 based on three consecutive program cohort default rates of 30 percent or greater, if the participation rate index for that GE program is equal to or less than 0.0625 for any of those three program cohorts' fiscal years.

(b) *Calculating the participation rate index for a GE program.* (1) Except as provided in paragraph (b)(2) of this section, the participation rate index for a GE program for a fiscal year is determined by multiplying the program cohort default rate for the GE program for that fiscal year by the percentage that is derived by dividing—

(i) The number of students who received an FFELP or a Direct Loan Program loan to enroll in that GE program during a period of enrollment, as defined in 34 CFR 682.200 or 685.102, that overlaps any part of a 12-month period that ended during the 6 months immediately preceding the program cohort's fiscal year, by

(ii) The number of regular students who were enrolled in that GE program on at least a half-time basis during any part of the same 12-month period.

(2) If your program cohort default rate for a fiscal year is calculated as an average rate under § 668.502(d)(2), you may calculate the participation rate index for the GE program for that fiscal year using either that average rate or the program cohort default rate that would be calculated for the fiscal year alone using the method described in § 668.502(d)(1).

(c) *Deadline for submitting an appeal.* You must send us your appeal under this section, including all supporting documentation, within 30 days after you receive notice of loss of eligibility of the GE program.

(d) *Determination.* (1) The GE program does not lose eligibility under § 668.506 if we determine that you meet the requirements for a participation rate index appeal for that GE program.

(2) If we determine that the participation rate index for a GE program for a fiscal year is equal to or less than 0.0625 under paragraph (d)(1) of this section, we also excuse you from any subsequent loss of eligibility under § 668.506 that would be based on the official program cohort default rate for that fiscal year.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.515 Average rates appeals.

(a) *Eligibility.*

(1) [Reserved]

(2) You may appeal a loss of eligibility under § 668.506 based on three program cohort default rates of 30 percent or greater, if at least two of those program cohort default rates—

(i) Are calculated as average rates under § 668.502(d)(2); and

(ii) Would be less than 30 percent if calculated for the fiscal year alone using the method described in § 668.502(d)(1).

(b) *Deadline for submitting an appeal.* (1) Before notifying you of the official program cohort default rate for a GE program, we make an initial determination about whether the GE program qualifies for an average rates appeal. If we determine that the GE program qualifies, we notify you of that determination at the same time that we notify you of the official program cohort default rate for that program.

(2) If you disagree with our initial determination, you must send us your average rates appeal for that GE program, including all supporting documentation, within 30 days after you receive the notice of your loss of eligibility.

(c) *Determination.* The GE program does not lose eligibility under § 668.506 if we determine that the GE program meets the requirements for an average rates appeal.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.516 Thirty-or-fewer borrowers appeals.

(a) *Eligibility.* You may appeal a notice of a loss of eligibility under § 668.506 if 30 or fewer borrowers, in total, are included in the three most recent cohorts of borrowers used to calculate the program cohort default rates for that GE program.

(b) *Deadline for submitting an appeal.* (1) Before notifying you of the official program cohort default rate for a GE program, we make an initial determination about whether the GE program qualifies for a thirty-or-fewer borrowers appeal. If we determine that the program qualifies, we notify you of that determination at the same time that we notify you of the official program cohort default rate for that GE program.

(2) If you disagree with our initial determination, you must send us the thirty-or-fewer borrowers appeal for that GE program, including all supporting documentation, within 30 days after you receive the notice of loss of eligibility of that GE program.

(c) *Determination.* The GE program does not lose eligibility under § 668.506 if we determine that the GE program meets the requirements for a thirty-or-fewer borrowers appeal.

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

§ 668.517 [Reserved]

(Authority: 20 U.S.C. 1001, 1002, 1088, 1094)

Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix A—Regulatory Impact Analysis

This regulatory impact analysis is divided into eight sections.

In ''Need for Regulatory Action,'' we discuss the problems of high debt and relatively poor earnings impacting students who enroll in gainful employment programs (''GE programs''). We also provide an overview of the Department's efforts to address these problems by establishing an institutional accountability framework for GE programs and increasing transparency about student outcomes in GE programs for the benefit of students, prospective students, and their families, the public, taxpayers, the Government, and institutions of higher education.

In ''Analysis of the Proposed Regulations,'' we present the impact of the proposed regulations on GE programs and students for a single year.

The ''Discussion of Costs, Benefits, and Transfers'' section considers the costs and benefits of the proposed regulations and the implications of the Department's impact estimates for students, institutions, the Federal Government, and State and local governments. There would be two primary benefits of the proposed regulations. Because the proposed regulations would establish an accountability framework that assesses program performance, we would expect students, prospective students, taxpayers, and the Federal Government to receive a better return on money spent on education. The proposed regulations would also establish a transparency framework designed to improve market information that would assist students, prospective students, and their families in making critical decisions about their educational investment and in understanding potential outcomes of that investment. The public, taxpayers, the Government, and institutions would also gain relevant and useful information about GE programs, allowing them to better evaluate their investment in these programs. Institutions would largely bear the costs of the proposed regulations, which would fall into three categories: paperwork costs associated with institutions complying with the regulations, costs that could be incurred by institutions if they attempt to improve their GE programs, and costs due to changing student enrollment. In addition, if programs that provided education of some value to students shut down as a result of the proposed regulations, then the foregone value of that service would be another potential cost to society.

We also consider the distribution of effects on institutions associated with the proposed regulations. For institutions, the distributional impact of the proposed regulations would be mixed. Institutions with programs that are in the zone or failing under the GE measures and programs that eventually lose eligibility could see lower revenues, primarily revenues derived from title IV, HEA program funds, and, depending upon the expenses associated with improving a failing or zone program, potentially reduced margins from that program. On the other hand, institutions with programs that pass the proposed regulations would likely experience growing enrollments and revenues and would benefit from the additional market information that would permit these institutions to demonstrate, and consumers to understand, the value of their GE programs. The net gain from the student aid and other revenue that results from student transfers to better performing programs would depend on the instructional expense that transfers with them.

Under ''Net Budget Impacts,'' we present our estimate that the proposed regulations would save the Federal Government between $75 million and $110 million annually depending on certain assumptions. The largest factor in these savings would result from reduced expenditures on Pell Grants, as some Pell Grant-eligible students may elect not to pursue postsecondary educational opportunities if the program they would have attended fails the GE measures or is in the zone.

We also provide a ''Sensitivity Analysis'' to demonstrate how alternative student and program response assumptions would impact our budget estimates.

In ''Return on Investment,'' we present an illustrative example of how the proposed regulations could impact student earnings.

In ''Regulatory Alternatives Considered,'' we describe the other approaches the Department considered for key features of the proposed regulations, including components of the GE measures and possible alternative GE measures. Many of these alternative approaches were discussed by the negotiated rulemaking committee.

Finally, in ''Initial Regulatory Flexibility Analysis,'' we consider issues relevant to small businesses and non-profit institutions.

Need for Regulatory Action

Background

The proposed regulations are intended to address growing concerns about educational programs that, as a condition of eligibility for title IV, HEA program funds, are required by statute to provide training that prepares students for gainful employment in a recognized occupation, but instead are leaving students with unaffordable levels of loan debt in relation to their earnings or resulting in students defaulting on their title IV, HEA program loans.

Through this regulatory action, the Department seeks to establish: (1) an accountability framework for GE programs that will define what it means to prepare students for gainful employment in a recognized occupation by establishing measures by which the Department would evaluate whether a GE program remains eligible for title IV, HEA program funds, and (2) a transparency framework that would increase the quality and availability of information about the outcomes of students enrolled in GE programs.

The accountability framework is designed to define what it means to prepare students for gainful employment by establishing measures that would assess whether programs provide quality education and training that lead to earnings that will allow students to pay back their student loan debts.

The transparency framework is designed to establish reporting and disclosure requirements that would increase the transparency of student outcomes of GE programs so that information is disseminated to students, prospective students, and their families that is accurate and comparable to help them make better informed decisions about where to invest their time and money in pursuit of a postsecondary degree or credential. Further, this information would provide the public, taxpayers, and the Government with relevant information to better understand the outcomes of the Federal investment in these programs. Finally, the transparency framework would provide institutions with meaningful information that they could use to improve student outcomes in these programs.

Outcomes, Practices, and Literature Review

GE programs include non-degree programs, including diploma and certificate programs, at public and private non-profit institutions such as community colleges and nearly all educational programs at for-profit institutions of higher education regardless of program length or credential level. Common GE programs provide training for occupations in fields such as cosmetology, business administration, medical assisting, dental assisting, nursing, and massage therapy.

We estimate that there are approximately 50,000[66] GE programs offered at postsecondary institutions around the country, with an enrollment of approximately 4 million[67] students receiving title IV, HEA program funds. About 60 percent of these programs are at public institutions, 10 percent at private non-profit institutions, and 30 percent at for-profit institutions.

For fiscal year 2010, 37,589 GE programs with an enrollment of 3,985,329 students receiving title IV, HEA program funds reported program information to the Department.[68] The Federal investment in students attending these programs is significant. In FY 2010, students attending GE programs received approximately $9.7 billion in Federal student aid grants and approximately $26 billion in Federal student aid loans.

Table 1 provides, by 2-digit CIP code, the number of GE programs for which institutions reported program information to the Department in FY 2010. Table 2 provides the enrollment of students receiving title IV, HEA program funds in GE programs, by 2-digit CIP code, for which institutions reported program information to the Department.

[66] Based on reporting in NSLDS, IPEDS, and other information provided by institutions.

[67] Id.

[68] NSLDS.

Table 1: FY 2010 GE Program Count

2-Digit CIP Code	2-Digit CIP Name	Public		Private		Proprietary							
		Ugrad cert	Post bacc cert	Ugrad cert	Post bacc cert	Ugrad cert	Associates	Bachelor's	Post bacc cert	Master's	Doctoral	First prof	Total
51	Health Professions and Related Sciences	4,735	291	404	274	2,493	1,078	155	16	87	18	11	9,562
52	Business Management and Administrative Services	3,401	117	127	166	474	649	376	30	119	23	1	5,483
12	Personal and Miscellaneous Services	1,059	1	47	3	2,354	127	28	0	3	0	17	3,639
47	Mechanics and Repairs	2,254	2	54	0	266	84	0	0	0	0	0	2,660
11	Computer and Information Sciences	1,613	51	52	38	292	342	219	7	39	5	0	2,658
15	Engineering Related Technologies	1,689	11	42	6	143	145	23	1	1	0	0	2,061
50	Visual and Performing Arts	583	28	53	72	107	238	275	0	38	1	0	1,395
13	Education	389	298	29	389	52	19	57	22	78	30	1	1,364
43	Protective Services	869	11	15	21	55	189	112	6	23	3	0	1,304
48	Precision Production Trades	1,047	0	22	0	41	13	0	0	0	0	0	1,123
46	Construction Trades	956	0	24	0	98	26	2	0	0	0	0	1,106
22	Law and Legal Services	312	5	40	19	118	197	40	5	2	1	10	749
19	Home Economics	667	15	12	8	15	11	13	2	2	1	0	746

1	Agricultural Business and Production	502	2	5	0	7	1	1	0	0	0	0	518
10	Telecommunications Technologies	378	0	4	1	31	42	55	0	3	0	0	514
44	Public Administration and Services	146	41	7	21	0	8	11	2	16	6	0	258
9	Communications	131	15	10	22	19	15	37	0	5	0	0	254
49	Transportation and Material Moving Workers	170	0	5	2	28	7	6	1	2	0	0	221
31	Parks, Recreation, Leisure, and Fitness Studies	106	5	7	2	36	21	15	2	2	0	0	196
24	Liberal Arts and Sciences, General Studies and Humanities	130	1	4	4	2	22	17	1	4	1	0	186
30	Multi-interdisciplinary Studies	60	52	12	30	5	2	15	2	3	0	0	181
45	Social Sciences and History	79	48	4	22	1	4	18	0	3	0	0	179
42	Psychology	9	29	4	55	0	3	16	6	27	21	0	170
14	Engineering	39	44	1	14	4	6	15	1	8	0	0	132
16	Foreign Languages and Literature	105	11	2	8	1	0	5	0	0	0	0	132
23	English Language and Literature/Letters	53	24	10	7	7	2	10	0	3	0	0	116
39	Theological Studies and Religious Vocations	1	0	45	43	0	2	9	0	5	2	0	107
26	Biological and Biomedical Sciences	35	30	1	13	1	2	10	0	0	0	0	92
3	Conservation and Renewable Natural Resources	62	4	2	4	1	0	8	1	2	0	0	84
41	Science Technologies	70	1	0	0	2	5	0	0	0	0	0	78
4	Architecture and Related Programs	39	6	1	6	1	0	3	0	2	0	1	59
5	Area, Cultural, Ethnic, and Gender Studies	20	24	3	7	0	0	1	0	0	0	0	55

25	Library Studies	22	11	0	7	0	0	1	0	0	0	0	41
40	Physical Sciences	12	11	0	5	1	0	2	0	0	0	0	31
54	History	2	6	0	2	0	2	6	3	4	0	0	25
27	Mathematics and Statistics	4	14	3	1	0	1	1	0	0	0	0	24
38	Philosophy and Religious Studies	0	3	7	4	0	0	4	0	2	1	0	21
32	Basic Skills	10	1	1	0	3	0	0	0	0	0	0	15
34	Health-related Knowledge and Skills	6	0	2	1	4	0	0	0	0	0	0	13
36	Leisure and Recreational Activities	5	1	3	0	0	0	2	0	1	0	0	12
28	Reserve Officer Training Corps	1	0	0	0	2	1	1	1	0	0	0	6
60	Residency Programs	0	5	0	1	0	0	0	0	0	0	0	6
21	Technology/Education Industrial Arts	0	1	0	1	0	1	1	0	0	0	0	4
29	Military Technologies	0	0	0	0	1	2	1	0	0	0	0	4
33	Citizenship Activities	2	1	0	0	0	0	0	0	0	0	0	3
37	Personal Awareness and Self Improvement	1	0	0	0	0	0	0	0	0	0	0	1
53	High School/Secondary Diplomas and Certificates	1	0	0	0	0	0	0	0	0	0	0	1
Total		21,775	1,221	1,064	1,279	6,665	3,267	1,571	109	484	113	41	37,589

Table 2: FY 2010 Title IV Enrollment in GE Programs

2-Digit CIP Code	2-Digit CIP Name	Public		Private		Proprietary							
		Ugrad cert	Post bacc cert	Ugrad cert	Post bacc cert	Ugrad cert	Associates	Bachelor's	Post bacc cert	Master's	Doctoral	First prof	Total
51	Health Professions and Related Sciences	277,010	2,475	35,356	3,130	445,923	306,061	94,512	735	41,885	5,035	9,116	1,221,238
52	Business Management and Administrative Services	129,593	1,690	3,904	2,180	16,174	231,033	308,843	2,184	109,180	15,357	0	820,138
12	Personal and Miscellaneous Services	44,669	0	3,169	6	198,590	34,860	5,857	0	15	0	568	287,734
43	Protective Services	57,765	152	841	171	3,209	115,239	85,657	90	8,098	1,014	0	272,236
11	Computer and Information Sciences	36,207	385	1,252	436	14,659	100,225	88,824	222	6,089	771	0	249,070
47	Mechanics and Repairs	67,155	6	3,878	0	79,074	15,040	0	0	0	0	0	165,153
13	Education	13,697	6,376	1,124	6,932	1,838	21,473	29,290	1,616	58,768	21,659	4	162,777
50	Visual and Performing Arts	14,935	153	1,104	548	6,573	36,354	66,897	0	3,166	13	0	129,743
15	Engineering Related Technologies	25,641	36	1,479	17	21,879	48,954	11,964	14	695	0	0	110,679
42	Psychology	1,021	711	10	1,071	0	463	36,866	218	18,666	12,990	0	72,016
22	Law and Legal Services	10,629	235	768	875	5,047	31,550	7,948	213	724	591	5,742	64,322
30	Multi-interdisciplinary Studies	1,448	507	57	209	74	32,287	23,772	117	2,076	0	0	60,547
19	Home Economics	50,594	133	946	78	785	999	2,846	85	1,442	446	0	58,354
44	Public Administration and Services	5,624	458	147	233	0	18,642	18,865	35	10,339	3,955	0	58,298

46	Construction Trades	21,776	0	1,988	0	13,271	2,529	51	0	0	0	0	39,615
48	Precision Production Trades	29,078	0	1,356	0	6,566	972	0	0	0	0	0	37,972
10	Telecommunications Technologies	9,587	0	105	2	3,730	4,841	12,737	0	490	0	0	31,492
24	Liberal Arts and Sciences, General Studies and Humanities	14,539	1	10	435	14	9,178	1,318	97	138	174	0	25,904
45	Social Sciences and History	741	381	76	391	89	61	14,869	0	740	0	0	17,348
23	English Language and Literature/Letters	8,436	156	1,142	21	2,059	3,668	1,476	0	119	0	0	17,077
9	Communications	3,684	85	63	112	2,046	873	8,424	0	277	0	0	15,564
49	Transportation and Material Moving Workers	4,109	0	725	22	7,518	436	430	3	146	0	0	13,389
31	Parks, Recreation, Leisure, and Fitness Studies	2,445	824	165	3	2,073	3,271	3,263	19	645	0	0	12,708
14	Engineering	980	385	7	289	46	149	5,241	1	174	0	0	7,272
1	Agricultural Business and Production	6,562	12	116	0	236	2	42	0	0	0	0	6,970
54	History	9	28	0	2	0	140	2,473	44	1,629	0	0	4,325
4	Architecture and Related Programs	2,718	114	1	89	2	0	114	0	97	0	532	3,667
3	Conservation and Renewable Natural Resources	1,253	5	5	52	7	0	2,075	6	258	0	0	3,661
16	Foreign Languages and Literature	2,574	48	4	47	27	0	30	0	0	0	0	2,730
38	Philosophy and Religious Studies	0	6	64	5	0	0	2,146	0	411	2	0	2,634
41	Science Technologies	1,602	3	0	0	169	422	0	0	0	0	0	2,196
26	Biological and Biomedical Sciences	482	282	1	45	71	107	719	0	0	0	0	1,707

39	Theological Studies and Religious Vocations	1	0	780	361	0	54	341	0	73	3	0	1,613
34	Health-related Knowledge and Skills	103	0	27	1	1,320	0	0	0	0	0	0	1,451
21	Technology/Education Industrial Arts	0	4	0	2	0	761	305	0	0	0	0	1,072
25	Library Studies	575	130	0	177	0	0	1	0	0	0	0	883
32	Basic Skills	176	1	10	0	366	0	0	0	0	0	0	553
5	Area, Cultural, Ethnic, and Gender Studies	133	140	14	17	0	0	1	0	0	0	0	305
36	Leisure and Recreational Activities	171	1	15	0	0	0	114	0	4	0	0	305
28	Reserve Officer Training Corps	5	0	0	0	11	17	139	10	0	0	0	182
40	Physical Sciences	70	34	0	36	0	0	17	0	0	0	0	157
27	Mathematics and Statistics	32	77	5	2	0	28	12	0	0	0	0	156
29	Military Technologies	0	0	0	0	12	62	4	0	0	0	0	78
60	Residency Programs	0	14	0	9	0	0	0	0	0	0	0	23
33	Citizenship Activities	6	1	0	0	0	0	0	0	0	0	0	7
37	Personal Awareness and Self Improvement	7	0	0	0	0	0	0	0	0	0	0	7
53	High School/Secondary Diplomas and Certificates	1	0	0	0	0	0	0	0	0	0	0	1
Total		847,843	16,049	60,714	18,006	833,458	1,020,751	838,483	5,709	266,344	62,010	15,962	3,985,329

Table 3 provides the percentage of students receiving title IV, HEA program funds in GE programs who fall within the following demographic categories: Pell grant recipients; received zero estimated family contribution (EFC) as indicated by their Free Application for Federal Student Aid (FAFSA); married; over the age of 24; veteran; and female.

Table 3: Characteristics of Students Enrolled in GE Programs (FY 2010) [69]

Sector	Institution type	Credential level	Percent Pell Recipient	Percent zero estimated family contribution	Percent married	Percent above 24 in age	Percent of veteran	Percent female
Public	All		70.5%	41.5%	30.1%	66.2%	3.7%	70.1%
	< 2 year	Certificate	67.5%	37.3%	39.3%	72.0%	3.6%	83.7%
	2-3 year	Certificate	71.1%	43.2%	28.9%	65.2%	3.7%	69.6%
	4+ year	Certificate	63.6%	33.2%	30.3%	63.6%	4.3%	67.5%
		Post-Bacc Certificate	n/a	15.4%	47.0%	94.3%	4.0%	65.0%
Private	All		67.8%	40.8%	31.2%	63.6%	3.4%	67.0%
	< 2 year	Certificate	81.4%	52.1%	31.9%	63.3%	3.0%	53.9%
		Post-Bacc Certificate	n/a	33.3%	66.7%	100.0%	0.0%	66.7%
	2-3 year	Certificate	56.8%	38.6%	31.5%	64.2%	3.9%	71.0%
		Post-Bacc Certificate	n/a	26.7%	6.7%	93.3%	0.0%	86.7%
	4+ year	Certificate	69.1%	47.6%	28.6%	53.6%	2.6%	68.4%
		Post-Bacc Certificate	n/a	17.4%	37.3%	89.1%	5.1%	68.3%

For-Profit	All		63.7%	34.1%	36.6%	68.8%	10.5%	64.1%
	< 2 year	Certificate	75.6%	47.0%	27.1%	55.5%	2.9%	74.1%
		Associate's	96.0%	80.6%	34.3%	50.3%	2.3%	57.5%
		1st Professional Degree	n/a	51.3%	31.7%	56.2%	0.0%	94.7%
	2-3 year	Certificate	74.9%	43.4%	27.8%	53.9%	4.7%	65.4%
		Associate's	74.2%	44.4%	24.2%	54.0%	5.0%	62.9%
		Post-Bacc Certificate	n/a	16.8%	44.4%	86.0%	2.8%	79.2%
	4+ year	Certificate	72.1%	45.3%	33.6%	61.3%	4.6%	76.5%
		Associate's	60.0%	35.6%	38.9%	66.7%	11.8%	63.2%
		Bachelor's	55.3%	27.0%	39.4%	75.2%	14.7%	59.5%
		Post-Bacc Certificate	n/a	15.5%	43.7%	97.9%	8.0%	75.5%
		Master's	n/a	19.0%	48.3%	94.5%	14.0%	66.0%
		Doctoral	n/a	16.5%	48.9%	97.9%	14.6%	66.9%
		1st Professional Degree	n/a	27.1%	32.7%	80.9%	10.9%	52.4%
All	All		64.9%	34.7%	36.1%	68.5%	10.0%	64.5%

[69] Pell grant recipient percentages based on students at undergraduate GE programs who entered repayment on title IV, HEA program loans between October 1, 2007 and September 30, 2009 and received a Pell grant for attendance at the institution between July 1, 2004 to June 30, 2009. Graduate programs not included in calculation of Pell recipient percentages. Other percentages based on students at GE programs who entered repayment on title IV, HEA program loans between October 1, 2007 and September 30, 2009 and had a demographic record in NSLDS in 2008. Sector and credential averages generated by weighting program results by FY 2010 enrollment.

Research has consistently demonstrated the significant benefits of postsecondary education. Among them are private pecuniary benefits [70] and social benefits, such as higher wages.[71] Even though the costs of postsecondary education have risen, there is substantial evidence that financial returns to students have increased commensurately.[72] Although evidence of the returns on GE programs in particular is sparse, the limited information that exists shows substantial variation in returns depending on the occupation that the program provides training for, including negative returns for some types of programs.[73]

Our analysis, described in more detail in ''Analysis of the Proposed Regulations,'' reveals that low earnings and high rates of student loan default are common in many GE programs. For example, 27 percent of the 5,539 GE programs evaluated with earnings data produced graduates with average annual earnings below those of a full-time worker earning no more than the Federal minimum wage ($15,080).[74] [75] Sixty-four percent of the 5,539 GE programs evaluated with earnings data produced graduates with average annual earnings less than the earnings of individuals who have not obtained a high school diploma ($24,492).[76] [77] Approximately 24 percent of former student borrowers who attended programs with below high school dropout earnings defaulted on their Federal student loans within the first three years of entering repayment. [78]

In light of the low earnings and high rates of default of some GE programs, the Department is concerned that all students at these programs may not be making optimal borrowing decisions. While many students appear to borrow less than might be optimal, either because they are risk averse or lack access to credit,[79] the outcomes described above indicate that overborrowing may be a significant problem for at least some students.

Over the past three decades, student loan debt has grown rapidly as increases in college costs have outstripped increases in family income,[80] State and local postsecondary education funding has flattened,[81] and relatively expensive for-profit institutions have proliferated.[82] Student loan debt now stands at over $904 billion nationally and rose by 41 percent, or $264 billion, between 2008 and 2012, a period when other forms of consumer debt were flat or declining.[83] Since 2003, the percentage of 25-year-olds with student debt has nearly doubled, increasing from 25 percent to 43 percent.[84] Young people with student debt also owe more; the average student loan balance among 25-year-olds with debt has increased from $10,649 in 2003 to $20,326 in 2012.[85] The increases in the percentage of young people with student debt and in average student debt loan balances have coincided with sluggish growth in State tax appropriations for higher education.[86] While State funding for public institutions has stagnated, Federal student aid has increased dramatically. From 2000–2001 to 2010–2011, Federal Pell Grant expenditures more than tripled, while Stafford Loan volumes more than doubled.[87]

Evidence suggests that student borrowing is not too high across the board.[88] Rather, overborrowing results from specific and limited conditions. Although students may have access to information on *average* rates of return, they may not understand how their own abilities, choice of major, or choice of institution may affect the expected value of the investment they make in their education.[89] Further, overborrowing may result because students do not understand the true cost of loans, because they overestimate their chance of graduating, or because they overestimate the earnings associated with the completion of their program of study.[90] For example, among a nationally representative sample of first-time bachelor degree-seeking students, only 52 percent of those who expected to complete a BA degree did so within six years of beginning their studies, and of these students, those who borrowed incurred an average debt of $14,457.[91]

Inefficiently high borrowing can cause substantial harm to borrowers. There is some suggestive evidence that high levels of student debt decrease the long-term probability of marriage.[92] For those who do not complete a degree, greater amounts of student debt may raise the probability of bankruptcy.[93] There is also evidence that it increases the probability of being credit constrained, particularly if students underestimate the probability of dropping out.[94] Student debt has been found to be associated with reduced home ownership rates.[95] And, excessively high student debt may make it more difficult for borrowers to meet new mortgage underwriting standards, tightened in response to the recent recession and financial crisis.[96]

[70] Avery, C., and Turner, S. (2013). Student Loans: Do College Students Borrow Too Much—Or Not Enough? *Journal of Economic Perspectives,* 26(1), 165–192.

[71] Moretti, E. (2004). Estimating the Social Return to Higher Education: Evidence from Longitudinal and Repeated Cross-Sectional Data. *Journal of Econometrics,* 121(1), 175–212.

[72] Avery, C., and Turner, S. (2013). Student Loans: Do College Students Borrow Too Much—Or Not Enough? *Journal of Economic Perspectives,* 26(1), 165–192.

[73] Lang, K., and Weinstein, R. (2013). ''The Wage Effects of Not-for-Profit and For-Profit Certifications: Better Data, Somewhat Different Results.'' NBER Working Paper #19135, Cambridge, MA.

[74] At the Federal minimum wage of $7.25 per hour (*www.dol.gov/whd/minimumwage.htm*), an individual working 40 hours per week for 52 weeks per year would have annual earnings of $15,080.

[75] 2012 GE informational rates. Our analysis by sector shows the following: Of the 5,539 programs evaluated with earnings data, 30 percent of for-profit programs and 13 percent of public non-profit programs produced graduates with average annual earnings below a Federal minimum wage worker.

[76] Based on a weekly wage of $471 (*http://www.bls.gov/emp/ep_chart_001.htm*) for 52 weeks.

[77] 2012 GE informational rates. Our analysis by sector shows the following: Of the 5,539 programs evaluated with earnings data, 72 percent of for-profit programs and 32 percent of public non-profit programs produced graduates with average annual earnings less than the earnings of individuals who have not obtained a high school degree.

[78] 2012 GE informational rates. Percent of defaulters calculated based on pCDR data for programs with mean or median earnings below high school dropout.

[79] Dunlop, E. ''What Do Student Loans Actually Buy You? The Effect of Stafford Loan Access on Community College Students,'' Working Paper (2013).

[80] Martin, A., and Andrew L., ''A Generation Hobbled by the Soaring Cost of College,'' New York Times, May 12, 2012.

[81] Deming, D., Goldin, C., and Katz, L. (2013). *For Profit Colleges. Future of Children,* 23(1), 137–164.

[82] Deming, D., Goldin, C., and Katz, L. (2013). *For Profit Colleges. Future of Children,* 23(1), 137–164.

[83] Federal Reserve Bank of New York (2012, November). *Quarterly Report on Household Debt and Credit.* Retrieved from *www.newyorkfed.org/research/nationaleconomy/householdcredit/DistrictReport_Q32012.pdf.*

[84] Brown, M., and Sydnee C. (2013). Young Student Loan Borrowers Retreat from Housing and Auto Markets. *Liberty Street Economics,* retrieved from: *http://libertystreeteconomics.newyorkfed.org/2013/04/young-student-loan-borrowers-retreat-from-housing-and-auto-markets.html.*

[85] Id.

[86] Deming, D., Goldin, C., and Katz, L. (2013). *For Profit Colleges. Future of Children,* 23(1), 137–164.

[87] Id.

[88] Avery, C., and Turner S. Student Loans: Do College Students Borrow Too Much Or Not Enough? *The Journal of Economic Perspectives* 26, no. 1 (2012): 189.

[89] Id. at 165–192.

[90] Id.

[91] Id.

[92] Gicheva, D. ''In Debt and Alone? Examining the Causal Link between Student Loans and Marriage.'' Working Paper (2013).

[93] Gicheva, D., and U. N. C. Greensboro. ''The Effects of Student Loans on Long-Term Household Financial Stability.'' Working Paper (2014).

[94] Id.

[95] Shand, J. M. (2007). ''The Impact of Early-Life Debt on the Homeownership Rates of Young Households: An Empirical Investigation.'' Federal Deposit Insurance Corporation Center for Financial Research.

[96] Brown, M., and Sydnee C. (2013). Young Student Loan Borrowers Retreat from Housing and

Continued

There is ample evidence that students are having difficulty repaying their loans. The national two-year cohort default rate on Stafford loans has increased from 5.2 percent in 2006 to 10 percent in 2011.[97] As of 2012, approximately 6 million borrowers were in default on Federal loans, owing $76 billion.[98]

There is a wide array of literature on the determinants of default, which include both student and institutional characteristics. A substantial body of research suggests that ''completing a postsecondary program is the strongest single predictor of not defaulting regardless of institution type.'' [99] In a study of outcomes 10 years after graduation for students receiving BS/BA degrees in 1993, Lochner and Monge-Naranjo found that both student debt and post-school income levels are significant predictors of repayment and nonpayment, although the estimated effects were modest.[100] In another study, Belfield examined the determinants of Federal loan repayment status of a more recent cohort of borrowers and found that loan balances had only a trivial influence on default rates.[101] However, Belfield found substantial differences between students who attended for-profit and those who attended public institutions. Even when controlling for student characteristics, measures of college quality, and college practices, students at for-profit institutions, especially two-year colleges, borrow more and have lower repayment rates than students at public institutions.[102] In two recent studies, Hillman and Deming, Goldin, and Katz also found that students who attend for-profit colleges have higher rates of default than comparable students who attend public colleges.[103] [104]

The causes of excessive debt, high default rates, and low earnings of students at GE programs include aggressive or deceptive marketing practices, a lack of transparency regarding program outcomes, excessive costs, low completion rates, deficient quality, and a failure to satisfy requirements needed for students to obtain higher paying jobs in a field such as licensing, work experience, and programmatic accreditation.

As we noted in connection with the 2011 Prior Rule, the outcomes of students who attend for-profit educational institutions are of particular concern. 76 FR 34386. The for-profit sector has experienced tremendous growth over the past 15 years, fueled in large part by Federal student aid funding.[105] The share of total enrollment of for-profit institutions eligible for title IV, HEA program funds has increased from about 4 percent in 2000 to nearly 11 percent in 2009,[106] while the share of Federal student financial aid going to students at for-profit institutions has doubled to nearly 25 percent over the same time period.[107]

The for-profit sector serves older students, women, Black students, Hispanic students, and students with low incomes at disproportionately high rates.[108] Single parents, students with a certificate of high school equivalency, and students with lower family incomes are more commonly found at for-profit institutions than community colleges.[109]

For-profit institutions develop curriculum and teaching practices that can be replicated at multiple locations and at convenient times, and offer highly structured programs to help ensure timely completion.[110] For-profit institutions ''are attuned to the marketplace and are quick to open new schools, hire faculty, and add programs in growing fields and localities.'' [111]

At least some research suggests that for-profit institutions respond to demand that public institutions are unable to handle because of budget shortfalls. Recent evidence from California suggests that for-profit institutions are increasingly absorbing students from budget constrained public institutions.[112] Conversely, increased taxpayer support for local community colleges results in higher enrollments in those institutions and a decrease in enrollments in for-profit schools in the first few years after a bond passage.[113]

For-profit institutions may also be able to respond more quickly to increases in demand for postsecondary education. Research by Deming, Goldin and Katz found that ''[c]hange[s] in for-profit college enrollments are more positively correlated with changes in State college-age populations than are changes in public-sector college enrollments.'' [114]

Although research indicates that the for-profit sector has some positive features, there is growing evidence of troubling outcomes and practices at many institutions. For-profit institutions typically charge higher tuitions than do public postsecondary institutions. 76 FR 34386. Average tuition and fees at less-than-two-year for-profit institutions are more than double the average cost at less-than-two-year public institutions.[115] Attending a two-year for-profit institution costs a student four times as much as attending a community college.[116]

''Unlike other sectors, grant aid has not risen with tuition in the for-profit sector, leading to steep increases in the net price that students pay.'' [117] Not surprisingly, ''student borrowing in the for-profit sector has risen dramatically to meet the rising net prices.'' [118] Students at for-profit institutions are more likely to receive Federal student financial aid and have higher average

Auto Markets. *Liberty Street Economics,* retrieved from: *http://libertystreeteconomics.newyorkfed.org/2013/04/young-student-loan-borrowers-retreat-from-housing-and-auto-markets.html.*

[97] U.S. Department of Education (2014). 2-year official national student loan default rates. *Federal Student Aid.* Retrieved from *http://www2.ed.gov/offices/OSFAP/defaultmanagement/defaultrates.html.*

[98] Martin, A., ''Debt Collectors Cashing In on Student Loans,'' New York Times, September 8, 2012.

[99] Gross, J. P., Cekic, O., Hossler, D., & Hillman, N. (2009). What Matters in Student Loan Default: A Review of the Research Literature. *Journal of Student Financial Aid,* 39(1), 19–29.

[100] Lochner, L., and Monge-Naranjo, A. (2014). ''Default and Repayment Among Baccalaureate Degree Earners.'' NBER Working Paper No. w19882.

[101] Belfield, C. R. (2013). ''Student Loans and Repayment Rates: The Role of For-Profit Colleges.'' *Research in Higher Education,* 54(1): 1–29.

[102] Id.

[103] Deming, D., Goldin, C., and Katz, L. (2012). The For-Profit Postsecondary School Sector: Nimble Critters or Agile Predators. *Journal of Economic Perspectives,* 26(1), 139–164.

[104] Hillman, N. W. ''College on Credit: A Multilevel Analysis of Student Loan Default.'' *The Review of Higher Education* 37.2 (2014): 169–195. *Project MUSE.* Web. 12 Mar. 2014.

[105] Id.

[106] Id.

[107] Id.

[108] Id.

[109] Id.

[110] Deming, D., Goldin, C., and Katz, L. (2012). The For-Profit Postsecondary School Sector: Nimble Critters or Agile Predators. *Journal of Economic Perspectives,* 26(1), 139–164.

[111] Deming, D., Goldin, C., and Katz, L. (2012). The For-Profit Postsecondary School Sector: Nimble Critters or Agile Predators. *Journal of Economic Perspectives,* 26(1), 139–164.

[112] Keller, J. (2011, January 13). Facing new cuts, California's colleges are shrinking their enrollments. *Chronicle of Higher Education.* Retrieved from *http://chronicle.com/article/Facing-New-Cuts-Californias/125945/.*

[113] Cellini, Stephanie Riegg. (2009). Crowded Colleges and College Crowd-Out: The Impact of Public Subsidies on the Two-Year College Market. *American Economic Journal: Economic Policy,* 1(2): 1–30.

[114] Deming, D.J., Goldin, C., and Katz, L.F. (2012). The For-Profit Postsecondary School Sector: Nimble Critters or Agile Predators? *Journal of Economic Perspectives,* 26(1), 139–164.

[115] IPEDS First-Look (July 2013), table 2. Average costs (in constant 2012–13 dollars) associated with attendance for full-time, first-time degree/certificate-seeking undergraduates at Title IV institutions operating on an academic year calendar system, and percentage change, by level of institution, type of cost, and other selected characteristics: United States, academic years 2010–11 and 2012–13.

[116] Id.

[117] Cellini, S. R., and Darolia, R. (2013). College Costs and Financial Constraints: Student Borrowing at For-Profit Institutions. Unpublished manuscript.

[118] Id.

student debt than students in public and not-for-profit institutions.[119] 76 FR 34386.

In 2011–2012, 86 percent of students who earned certificates from for-profit institutions took out student loans compared to 35 percent of certificate recipients from public two-year institutions.[120] Of those who borrowed, the median loan amount borrowed of for-profit certificate recipients was $11,000 as opposed to $8,000 for certificate recipients from public two-year institutions.[121] Eighty-eight percent of associate degree graduates from for-profit institutions took out student loans, while only 40 percent of associate degree recipients from public two-year institutions took out student loans.[122] Of those who borrowed, for-profit associate degree recipients had a median loan amount borrowed of $23,590 in comparison to $10,000 for students who received their degrees from public two-year institutions.[123]

''While increasing in every sector in recent years, student loan default rates have consistently been highest among students in the for-profit college sector.'' [124] [125] Approximately 22 percent of borrowers who attended for-profit institutions default on their Federal student loans within the first three years of entering repayment as compared to about 13 percent of borrowers who attended public institutions.[126] Two other estimates produced by the Department for purposes other than determining eligibility for title IV, HEA program funds yield even higher default rates for for-profit students. First, estimates of ''cumulative lifetime default rates,'' based on the number of loans, rather than borrowers, yield a default rate of about 31 percent for cohorts graduating between 2005 and 2009.[127] Second, based on estimates used in the President's budget, which use dollars, rather than loans or borrowers, to estimate defaults, lifetime defaults are around 48 percent for two-year for-profit students.[128]

Although more expensive, there is growing evidence that many for-profit programs may not prepare students as well as comparable programs at public institutions. 75 FR 43618. A 2011 GAO report reviewed results of licensing exams for 10 occupations that are, by enrollment, among the largest fields of study and found that that for 9 out of 10 licensing exams, graduates of for-profit institutions had lower rates of passing than graduates of public institutions.[129] Many for-profit institutions devote greater resources to recruiting and marketing than they do to instruction or to student support services.[130] An investigation by the U.S. Senate Committee on Health, Education, Labor & Pensions (Senate HELP Committee) of thirty prominent for-profit institutions found that almost 23 percent of revenues were spent on marketing and recruiting but only 17 percent on instruction.[131] A review of useable data provided by some of the institutions that were investigated showed that they employed 35,202 recruiters compared with 3,512 career services staff and 12,452 support services staff.[132]

Lower rates of completion in many four-year for-profit institutions are also a cause for concern. 76 FR 34409. The six-year graduation rate of first-time undergraduate students who began at a four-year degree-granting institution in 2003–2004 was 34 percent at for-profit institutions in comparison to 65 percent at public institutions. However, for first-time undergraduate students who began at a two-year degree-granting institution in 2003–2004, the six-year graduation rate was 40 percent at for-profit institutions in comparison to 35 percent at public institutions.[133]

The higher costs of for-profit institutions and consequently greater amounts of debt incurred by their former students, together with generally lower rates of completion, continue to raise concerns about whether for-profit programs lead to earnings that justify the investment made by students. See 75 FR 43617. As we stated in connection with the 2011 Prior Rule, this ''value proposition'' is what ''distinguishes programs 'that lead to gainful employment in a recognized occupation.' '' 76 FR 34386.

''While research is still emerging on returns to for-profit colleges, recent studies indicate that for-profit students generate earnings gains that are lower than those of students in other sectors.'' [134] ''Among associate's degree students, estimates of returns to for-profit attendance are generally in the range of 2 to 8 percent per year of education, compared to upwards of 9 percent in the public sector.'' [135] Analysis of data collected on the outcomes of 2003–2004 first-time beginning postsecondary students as a part of the Beginning Postsecondary Students Longitudinal Study shows that students who attend for-profit institutions are more likely to be idle, not working or in school, six years after starting their programs of study in comparison to students who attend other types of institutions.[136] Further, for-profit students no longer enrolled in school six years after beginning postsecondary education have lower earnings at the six-year mark than students who attend other types of institutions.[137] Some studies, however, fail to find significant differences between the returns to students on educational programs at for-profit institutions and other sectors.[138]

Overall, these outcomes are troubling for two reasons. First, some students will have earnings that will not support the debt they incurred to enroll in these GE programs. Second, because students are limited under the HEA in the amounts of Federal grants and loans they may receive to support their education, their options to move to higher-quality and affordable programs are constrained as they may no longer

[119] Deming, D.J., Goldin, C., and Katz, L.F. (2012). The For-Profit Postsecondary School Sector: Nimble Critters or Agile Predators? *Journal of Economic Perspectives,* 26(1), 139–164.

[120] National Postsecondary Student Aid Study 2012.

[121] Id.

[122] Id.

[123] Id.

[124] Darolia, R. (2013). Student Loan Repayment and College Accountability. Federal Reserve Bank of Philadelphia.

[125] Deming, D.J., Goldin, C., and Katz, L.F. (2012). The For-Profit Postsecondary School Sector: Nimble Critters or Agile Predators? *Journal of Economic Perspectives,* 26(1), 139–164.

[126] Based on the Department's analysis of the three-year cohort default rates for fiscal year 2010, U.S. Department of Education, available at *www.ed.gov/news/press-releases/default-rates-continue-rise-federal-student-loans.*

[127] Cellini S.R., and Darolia, R. (2013). College Costs and Financial Constraints: Student Borrowing at For-Profit Institutions. Unpublished manuscript. *http://www.upjohn.org/stuloanconf/Cellini_Darolia.pdf.*

[128] Id.

[129] Postsecondary Education: Student Outcomes Vary at For-Profit, Nonprofit, and Public Schools (GAO–12–143), GAO, December 7, 2011.

[130] For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success, Senate HELP Committee, July 30, 2012.

[131] Id.

[132] Id.

[133] U.S. Department of Education, National Center for Education Statistics (NCES), 2003–04 Beginning Postsecondary Students Longitudinal Study, Second Follow-up (BPS:04/09) (cumulative certificate, associate's degree, and bachelor's degree attainment at any institution).

[134] Darolia, R. (2013). Student Loan Repayment and College Accountability. Federal Reserve Bank of Philadelphia.

[135] Cellini S. R., and Darolia, R. (2013). College Costs and Financial Constraints: Student Borrowing at For-Profit Institutions. Unpublished manuscript. *http://www.upjohn.org/stuloanconf/Cellini_Darolia.pdf.*

[136] Deming, D., Goldin, C., and Katz, L. The For-Profit Postsecondary School Sector: Nimble Critters or Agile Predators?, *Journal of Economic Perspectives,* vol. 26, no. 1, Winter 2012.

[137] Id.

[138] Lang, K., and Weinstein R. (2013). ''The Wage Effects of Not-for-Profit and For-Profit Certifications: Better Data, Somewhat Different Results.'' NBER Working Paper.

have access to sufficient student aid. Specifically, Federal law sets lifetime limits on the amount of grant and subsidized loan assistance students may receive: Federal Pell Grants may be received only for the equivalent of 12 semesters of full-time attendance, and Federal subsidized loans may be received for no longer than 150 percent of the published program length.[139] These limitations make it even more critical that students' initial choices in GE programs prepare them for employment that provides adequate earnings and do not result in excessive debt.

We also remain concerned that students seeking to enroll in these programs do not have access to reliable information that will enable them to compare programs in order to make informed decisions about where to invest their time and limited educational funding. As we noted in the 2011 Prior Rule, the GAO and other investigators have found evidence of high-pressure and deceptive recruiting practices at some for-profit institutions. See 76 FR 34386. In 2010, the GAO released the results of undercover testing at 15 for-profit colleges across several States.[140] Thirteen of the colleges tested gave undercover student applicants ''deceptive or otherwise questionable information'' about graduation rates, job placement, or expected earnings.[141] The Senate HELP Committee investigation of the for-profit education sector also found evidence that many of the most prominent for-profit institutions engage in aggressive sales practices and provide misleading information to prospective students.[142] Recruiters described ''boiler room''-like sales and marketing tactics and internal institutional documents showed that recruiters are taught to identify and manipulate emotional vulnerabilities and target non-traditional students.[143]

There has been growth in the number of *qui tam* lawsuits brought by private parties alleging wrongdoing at for-profit institutions, such as overstating job placement rates. Moreover, a growing number of State and other Federal law enforcement authorities have launched investigations into whether for-profit institutions are using aggressive or even deceptive marketing and recruiting practices. Several State Attorneys General have sued for-profit institutions to stop these fraudulent marketing practices which include manipulations of job placement rates. On August 19, 2013, the New York State Attorney General announced a $10.25 million settlement with Career Education Corporation (CEC), a private for-profit education company, after its investigation revealed that CEC significantly inflated its graduates' job placement rates in disclosures made to students, accreditors, and the State.[144] The State of Illinois sued Westwood College for misrepresentations and false promises made to students enrolling in the company's criminal justice program.[145] The Commonwealth of Kentucky has filed lawsuits against several private for-profit institutions, including National College of Kentucky, Inc., for misrepresenting job placement rates, and Daymar College, Inc., for misleading students about financial aid and overcharging for textbooks.[146] And most recently, early this year, a group of 13 State Attorneys General issued Civil Investigatory Demands to Corinthian Colleges, Inc., Education Management Co., ITT Educational Services, Inc., and CEC, seeking information about job placement rate data and marketing and recruitment practices. The States participating include Arizona, Arkansas, Connecticut, Idaho, Iowa, Kentucky, Missouri, Nebraska, North Carolina, Oregon, Pennsylvania, Tennessee, and Washington.

Further, the Consumer Financial Protection Bureau issued Civil Investigatory Demands to Corinthian Colleges, Inc. and ITT Educational Services, Inc. in November, 2013, demanding information about their marketing, advertising, and lending policies.[147] The Securities and Exchange Commission also subpoenaed records from Corinthian Colleges, Inc. on June 6, 2013, seeking student information in the areas of recruitment, attendance, completion, placement, and loan defaults.[148] These inquiries supplement the Department's existing monitoring and compliance efforts to protect against such abuses.

The 2012 Senate HELP Committee report also found extensive evidence of aggressive and deceptive recruiting practices, excessive tuition, and regulatory evasion and manipulation by for-profit colleges in their efforts to enroll service members, veterans, and their families. The report described veterans being viewed as ''dollar signs in uniform.'' [149] The Los Angeles Times reported that recruiters from for-profit colleges have been known to recruit at Wounded Warriors centers and at veterans hospitals, where injured soldiers are pressured into enrolling through promises of free education and more.[150] Some for-profit colleges take advantage of service members and veterans returning home without jobs through a number of improper practices, including by offering post-9/11 GI Bill benefits that are intended for living expenses as ''free money.'' [151] Many veterans enroll in online courses simply to gain access to the monthly GI Bill benefits even if they have no intention of completing the coursework.[152] In addition, some institutions have recruited veterans with serious brain injuries and emotional vulnerabilities without providing adequate support and counseling, engaged in misleading recruiting practices onsite at military installations, and failed to accurately disclose information regarding the graduation rates of veterans.[153] In June 2012, an investigation in 20 States, led by the Commonwealth of Kentucky's

[139] See section 401(c)(5) of the HEA, 20 U.S.C. 1070a(c)(5), for Pell Grant limitation; see section 455(q) of the HEA, 20 U.S.C. 1087e(q), for the 150 percent limitation.

[140] For-Profit Colleges: Undercover Testing Finds Colleges Encouraged Fraud and Engaged in Deceptive and Questionable Marketing Practices (GAO–10–948T), GAO, August 4, 2010 (reissued November 30, 2010).

[141] Id.

[142] For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success, Senate HELP Committee, July 30, 2012.

[143] Id.

[144] ''A.G. Schneiderman Announces Groundbreaking $10.25 Million Dollar Settlement with For-Profit Education Company That Inflated Job Placement Rates to Attract Students,'' press release, Aug. 19, 2013. Available at: *www.ag.ny.gov/press-release/ag-schneiderman-announces-groundbreaking-1025-million-dollar-settlement-profit.*

[145] ''Attorneys General Take Aim at For-Profit Colleges' Institutional Loan Programs,'' The Chronicle of Higher Education, March 20, 2012. Available at: *http://chronicle.com/article/Attorneys-General-Take-Aim-at/131254/.*

[146] ''Kentucky Showdown,'' Inside Higher Ed, Nov. 3, 2011. Available at: *www.insidehighered.com/news/2011/11/03/ky-attorney-general-jack-conway-battles-profits.*

[147] ''For Profit Colleges Face New Wave of State Investigations, Bloomberg, Jan. 29, 2014. Available at: *www.bloomberg.com/news/2014–01–29/for-profit-colleges-face-new-wave-of-coordinated-state-probes.html.*

[148] ''Corinthian Colleges Crumbles 14% on SEC probe,'' Fox Business, June 11, 2013. Available at: *www.foxbusiness.com/government/2013/06/11/corinthian-colleges-crumbles-14-on-sec-probe/.*

[149] ''Dollar Signs In Uniform,'' Los Angeles Times, Nov. 12, 2012. Available at: *http://articles.latimes.com/2012/nov/12/opinion/la-oe-shakely-veterans-college-profit-20121112*; citing ''Harkin Report,'' S. Prt. 112–37, For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success, July 30, 2012.

[150] Id.

[151] Id.

[152] Id.

[153] ''We Can't Wait: President Obama Takes Action to Stop Deceptive and Misleading Practices by Educational Institutions that Target Veterans, Service Members and their Families,'' White House Press Release, April 26, 2012. Available at: *www.whitehouse.gov/the-press-office/2012/04/26/we-can-t-wait-president-obama-takes-action-stop-deceptive-and-misleading.*

Attorney General, resulted in a $2.5 million settlement with QuinStreet, Inc. and the closure of GIBill.com, a Web site that appeared as if it was an official site of the U.S. Department of Veterans Affairs, but was in reality a for-profit portal that steered veterans to 15 colleges, almost all for-profit institutions, including Kaplan University, the University of Phoenix, Strayer University, DeVry University, and Westwood College.[154]

Basis of Regulatory Approach

The components of the proposed accountability framework that a program must satisfy to meet the gainful employment requirement are rooted in the legislative history of the predecessors to the statutory provisions of sections 101(b)(1), 102(b), 102(c), and 481(b) of the HEA that require institutions to establish the title IV, HEA program eligibility of GE programs. 20 U.S.C. 1001(b)(1), 1002(b)(1)(A)(i), (c)(1)(A), 1088(b).

The legislative history of the statute preceding the HEA that first permitted students to obtain federally financed loans to enroll in programs that prepared them for gainful employment in recognized occupations demonstrates the conviction that the training offered by these programs should equip students to earn enough to repay their loans. *APSCU* v. *Duncan,* 870 F.Supp.2d at 139; see also 76 FR 34392. Allowing these students to borrow was expected to neither unduly burden the students nor pose ''a poor financial risk'' to taxpayers. 76 FR 34392. Specifically, the Senate Report accompanying the initial legislation (the National Vocational Student Loan Insurance Act (NVSLIA), Pub. L. 89–287) quotes extensively from testimony provided by University of Iowa professor Dr. Kenneth B. Hoyt, who testified on behalf of the American Personnel and Guidance Association. On this point, the Senate Report sets out Dr. Hoyt's questions and conclusions:

Would these students be in a position to repay loans following their training? * * *

If loans were made to these kinds of students, is it likely that they could repay them following training? Would loan funds pay dividends in terms of benefits accruing from the training students received? It would seem that any discussion concerning this bill must address itself to these questions. * * *

We are currently completing a second-year followup of these students and expect these reported earnings to be even higher this year. *It seems evident that, in terms of this sample of students, sufficient numbers were working for sufficient wages so as to make the concept of student loans to be [repaid] following graduation a reasonable approach to take.* * * * I have found no reason to believe that such funds are not needed, *that their availability would be unjustified in terms of benefits accruing to both these students and to society in general, nor that they would represent a poor financial risk.*

Sen. Rep. No. 758, 89th Cong., First Sess. (1965) at 3745, 3748–49 (emphasis added).

Notably, both debt burden to the borrower and financial risk to taxpayers and the Government were clearly considered in authorizing federally backed student lending. Under the loan insurance program enacted in the NVSLIA, the specific potential loss to taxpayers of concern was the need to pay default claims to banks and other lenders if the borrowers defaulted on the loans. After its passage, the NVSLIA was merged into the HEA, which in title IV, part B, has both a direct Federal loan insurance component and a Federal reinsurance component, under which the Federal Government reimburses State and private non-profit loan guaranty agencies upon their payment of default claims. 20 U.S.C. 1071(a)(1). Under either HEA component, taxpayers and the Government assume the direct financial risk of default. 20 U.S.C. 1078(c) (Federal reinsurance for default claim payments), 20 U.S.C. 1080 (Federal insurance for default claims).

Not only did Congress consider expert assurances that vocational training would enable graduates to earn wages that would not pose a ''poor financial risk'' of default, but an expert observed that this conclusion rested on evidence that ''included both those who completed and those who failed to complete the training.'' *APSCU* v. *Duncan,* 870 F.Supp.2d at 139, *citing* H.R. Rep. No. 89–308, at 4 (1965), and S. Rep. No. 89–308, at 7, 1965 U.S.C.C.A.N. 3742, 3748.

The concerns regarding excessive student debt reflected in the legislative history of the gainful employment eligibility provisions of the HEA are as relevant now as they were then. Excessive student debt affects students and the country in three significant ways: Payment burdens on the borrower; the cost of the loan subsidies to taxpayers; and the negative consequences of default (which affect borrowers and taxpayers).

The first consideration is payment burdens on the borrower. As we said previously in connection with the 2011 Prior Rule and restate here, loan payments that outweigh the benefits of the education and training for GE programs that purport to lead to jobs and good wages are an inefficient use of the borrower's resources. See 75 FR 43621.

The second consideration is taxpayer subsidies. Borrowers who have low incomes but high debt may reduce their payments through income-driven repayment plans. These plans can either be at little or no cost to taxpayers or, through loan cancellation, can cost taxpayers as much as the full amount of the loan with interest. 75 FR 43622. Deferments and repayment options are important protections for borrowers because, although postsecondary education generally brings higher earnings, there is no guarantee for the individual. Policies that assist those with high debt burdens are a critical form of insurance. However, as we explained in connection with the 2011 Prior Rule, these repayment options should not mean that institutions should increase the level of risk to the individual student or taxpayers through high-cost, low-value programs. See id.

The third consideration is default. The Federal Government covers the cost of defaults on Federal student loans. These costs can be significant to taxpayers. Id. We continue to assert as we did in connection with the 2011 Prior Rule and restate here, loan defaults harm students and their families. Id. Their credit rating is damaged, undermining their ability to rent a house, get a mortgage, or purchase a car. To the extent they can get credit, they pay much higher interest. And, increasingly, employers consider credit records in their hiring decisions. 75 FR 43622. In addition, former students who default on Federal loans cannot receive additional title IV, HEA program funds for postsecondary education. Id.; see also section 484(a)(3) of the HEA, 20 U.S.C. 1091(a)(3).

In accordance with the legislative intent behind the gainful employment eligibility provisions now found in sections 101, 102, and 481 of the HEA and the significant policy concerns they reflect, we propose to use the certification requirements to establish a program's eligibility and, to assess continuing eligibility, the metrics-based standards that measure whether students will be able to pay back the educational debt they incur to enroll in the occupational training programs that

[154] ''$2.5M Settlement over 'GIBill.com','' Inside Higher Ed, June 28, 2012. Available at: *www.insidehighered.com/news/2012/06/28/attorneys-general-announce-settlement-profit-college-marketer.*

are the subject of this rulemaking. 20 U.S.C. 1001(b)(1), 1002(b)(1)(A)(i), (c)(1)(A), 1088(b).

Proposed Regulatory Framework

As stated previously, the Department's goals in the proposed regulations are twofold: to establish an accountability framework for GE programs, and to increase the transparency of student outcomes of GE programs.

As part of the accountability framework, to determine whether a program provides training that prepares students for gainful employment as required by the HEA, we propose procedures to establish a program's eligibility and to measure its outcomes on a continuing basis. To establish a program's eligibility, an institution would be required to certify that each of its GE programs meets all applicable accreditation and licensure requirements necessary for a student to obtain employment in the occupation for which the program provides training. This certification would be incorporated into the institution's program participation agreement.

To assess the continuing eligibility of a GE program, we propose to use two measures—the D/E rates measure, which compares the debt incurred by students completing the program against their earnings, and the pCDR measure, which examines the rate at which borrowers who previously enrolled in the program default on their FFEL or Direct Loans. The proposed regulations would establish minimum thresholds for the D/E rates measure and the pCDR measure. The D/E rates and the pCDR measures would operate independently of each other, as they are designed to achieve complementary objectives, capturing two ways a program could fail to meet the gainful employment requirement.

In addition to the accountability framework, the proposed regulations include institutional reporting and disclosure requirements designed to increase the transparency of student outcomes for GE programs. Institutions would be required to report information that is necessary to implement aspects of the proposed regulations that support the Department's two goals of accountability and transparency. This would include information needed to calculate the D/E rates and the pCDR, as well as some of the specific required disclosures. The proposed disclosure requirements would operate independently of the proposed eligibility requirements and ensure that relevant information regarding GE programs is made available to students, prospective students, and their families, the public, taxpayers, and the Government, and institutions. The disclosure requirements would provide for accountability and transparency throughout the admissions and enrollment process so that students, prospective students, and their families can make informed decisions. Specifically, institutions would be required to make information regarding such items as cost of attendance, completion, debt, earnings, and student loan repayment available in a meaningful and easily accessible format.

Together, the certification requirements, accountability metrics, and disclosure requirements are designed to make improved and standardized market information about GE programs available for better decision making by students, prospective students, and their families, the public, taxpayers, and the Government, and institutions and lead to a more competitive marketplace that encourages improvement; improve the quality of programs and lead to reduced costs and student debt; eliminate poor performing programs; result in a better return on educational investment for students, prospective students, and their families, as well as for taxpayers and the Federal Government; and, for institutions with high-performing programs, lead to growth in enrollments and revenues resulting from transparent market information that would permit those institutions to demonstrate to consumers the value of their GE programs.

The D/E Rates and pCDR

As previously stated, as part of the accountability framework, we propose two complementary yet independent measures—the D/E rates measure and the pCDR measure—that would be used to determine whether a GE program remains eligible for title IV, HEA program funds. The debt-to-earnings measures under both the 2011 Prior Rule and the proposed regulations assess the debt burden incurred by students who completed a GE program in relation to their earnings. The pCDR measure, like the loan repayment rate in the 2011 Prior Rule, would assess the extent to which a program's borrowers are paying back their loans, whether or not they completed the program, by measuring the GE program's title IV, HEA loan default rate.

The D/E rates measure would evaluate the amount of debt students who completed a GE program incurred to enroll in that program in comparison to those same students' discretionary and annual earnings after completing the program. The proposed regulations would establish the standards by which the program would be assessed to determine, for each year rates are calculated, whether it passes or fails the D/E rates measure or is ''in the zone.'' Under the proposed regulations, to pass the D/E rates measure, the GE program must have a discretionary income rate less than or equal to 20 percent or an annual earnings rate less than or equal to 8 percent. The proposed regulations would also establish a zone for GE programs that have a discretionary income rate between 20 percent and 30 percent or an annual earnings rate between 8 percent and 12 percent. GE programs with a discretionary income rate over 30 percent and an annual earnings rate over 12 percent would fail the D/E rates measure. Under the proposed regulations, a GE program would become ineligible for title IV, HEA program funds if it fails the D/E rates measure for two out of three consecutive years, or has a combination of D/E rates measures that are in the zone or failing for four consecutive years. We propose the D/E rates measure and the thresholds to assess whether a GE program has prepared students to earn enough to repay their loans, to better safeguard the Federal investment in the program.

To allow institutions an opportunity to improve, the proposed regulations include a transition period for the first four years after the final regulations become effective. During the transition period, an alternative D/E rates calculation would be made so that institutions could benefit from any immediate reductions in cost they make. During these four years, the transition period and zone together would allow institutions to make improvements to their programs in order to become passing.

In addition to the D/E rates measure, the proposed regulations would establish a pCDR measure. The pCDR measure would evaluate the default rate of former students enrolled in a GE program, regardless of whether they completed the program. Under the proposed regulations, a program would lose eligibility if its GE program has a pCDR of 30 percent or greater for three consecutive fiscal years. We propose the pCDR measure and the thresholds to identify those programs that may pass, or may not be evaluated by, the D/E rates measure, but whose students incur debt they cannot repay and ultimately default on their loans. Unlike the D/E rates measure, the pCDR measure would include students who did not complete their programs and therefore would assess programs with low completion

rates that, regardless of the earnings of students who complete the program, leave a significant number of students without credentials and with unmanageable debt.

Both the D/E rates measure and pCDR measure assess program outcomes that, consistent with legislative intent, indicate whether a program is preparing students for gainful employment. Although the measures supplement and complement one another, each focuses on separate and distinct expectations upon which Congress relied in enacting legislation that make these programs eligible for title IV, HEA program funds based on the condition that they provide training that prepares students for gainful employment. Consequently, we believe the measures should operate independently.

The D/E rates and pCDR measures are designed to reflect and account for the three primary reasons that a program may fail to prepare students for gainful employment where former students are unable to earn wages adequate to manage their educational debt: (1) A program does not train students in the skills they need to obtain and maintain jobs in the occupation for which the program purports to train students, (2) a program provides training for an occupation for which low wages do not justify program costs, and (3) the program is experiencing a high number of withdrawals or ''churn'' because relatively large numbers of students enroll but few, or none, complete the program, which can often lead to default.

The D/E rates measure assesses the outcomes of only those students who complete the program. The calculation includes former students who received title IV, HEA program funds and took on educational debt and those who did not. And, for those students who have debt, the D/E rates take into account private loans and institutional financing in addition to title IV, HEA program loans.

The D/E rates measure primarily assesses whether the loan funds obtained by students ''pay dividends in terms of benefits accruing from the training students received,'' and whether such training has indeed equipped students to earn enough to repay their loans such that they are not unduly burdened. H.R. Rep. No. 89–308, at 4 (1956); S. Rep. No. 89–758, at 7 (1965). A 2002 survey found that a majority of borrowers felt burdened by their student loan payments and reported that they would borrow ''much less'' or a ''little less'' to finance their higher education if they were to enroll again in an educational program. An analysis of the 2002 survey combined borrowers' responses to questions about student loan burden, hardship, and regret to create a ''debt burden index'' that was significantly positively associated with borrowers' debt-to-income ratios; in other words, borrowers with higher debt-to-income ratios tended to feel higher levels of burden, hardship, and regret.[155]

As a result, the D/E rates measure identifies programs that fail to adequately provide students with the occupational skills needed to obtain employment or that train students for occupations with low wages. The D/E rates also provide evidence of the experience of borrowers and, specifically, where borrowers may be struggling with their debt burden.

In contrast to the D/E rates measure, pCDR measures the extent to which a program's former students are paying back their Direct and FFEL loans regardless of their earnings, if any. In comparison to the D/E rates measure, the pCDR measure applies to those programs that have relatively high enrollments but no or few completions such that students are left with debt they cannot repay. As stated previously, research indicates that ''completing a postsecondary program is the strongest single predictor of not defaulting regardless of institution type.'' [156]

The legislative history supports inclusion of students who did not complete a program in the proposed accountability framework. As discussed, Congress specifically considered expert advice that students who took out Federal loans for the purpose of training programs, including students who do not complete the programs, would be able to repay those loans, as defaults by those students would burden taxpayers in the same way as defaults by students who completed the program.

The pCDR, consequently, is foremost a measure that assesses whether a program presents a ''poor financial risk to the taxpayer.'' 76 FR 34392. In light of congressional intent reflected in the legislative history, a program that presents a poor financial risk for taxpayers cannot be considered a program that prepares students for gainful employment.

Despite the distinctive purposes of the D/E rates and pCDR measures, the measures supplement and complement one another. The scope of the pCDR measure is broader than the D/E rates measure as the pCDR measure also takes into account the outcomes of borrowers who did not complete the program. Accordingly, the pCDR measure supplements the D/E rates measure in those cases in which D/E rates cannot be calculated because no or very few students who enrolled in a program actually completed the program. By including an accountability metric that reflects the outcomes of students who do not complete the program, institutions would have incentive to address any high dropout and ''churn'' issues or face the loss of eligibility.

Likewise, the D/E rates measure complements the pCDR measure. Specifically, the pCDR measure does not take into account the many students who may be struggling to repay their loans, such as those receiving economic hardship deferments or who are in an income-driven repayment plan. These students may see their loans grow, rather than shrink, because their incomes are low and their debts are high. While the pCDR measure may not identify programs whose former students are in such circumstances, the D/E rates measure would take into account those students who are struggling with their debt burden despite having completed their programs.

Analysis of the Proposed Regulations

Data and Methodology for Analysis of the Proposed Regulations

Data

After the effective date of the 2011 Final Rules on July 1, 2011, the Department received, pursuant to the reporting requirements of the 2011 Final Rules, information from institutions on their GE programs for award years 2006–2007 through 2010–2011 (GE Data). The GE Data is stored in the National Student Loan Database System (NSLDS), maintained by the Department's Office of Federal Student Aid (FSA). The GE Data originally included information on students who received title IV, HEA program funds, as well as students who did not. After the decisions in *APSCU* v. *Duncan,* the Department removed from NSLDS and destroyed the data on students who did not receive title IV, HEA program funds.

Using the GE Data, student loan information also stored in NSLDS, and earnings information obtained from SSA, the Department calculated (1) 2012 GE informational D/E rates and (2) 2012 GE informational pCDR for GE programs. As discussed in the ''Background'' section of the preamble to this NPRM, the 2012 GE informational D/E rates and 2012 GE

[155] Baum, S., and Schwartz, S. (2003). How Much Debt is Too Much? Defining Benchmarks for Managing Student Debt.

[156] Gross, J. P., Cekic, O., Hossler, D., and Hillman, N. (2009). What Matters in Student Loan Default: A Review of the Research Literature. *Journal of Student Financial Aid,* 39(1), 19–29.

informational pCDR are referred to as the ''2012 GE informational rates.'' The 2012 GE informational rates are stored in a data file maintained by the Department that is accessible on its Web site.[157]

The 2012 GE informational D/E rates were calculated by program and are based on the debt and earnings of students receiving title IV, HEA program funds who completed GE programs between October 1, 2007, and September 30, 2009 (the ''08/09 2012 D/E rates cohort''). The annual loan payment component of the debt-to-earnings formulas for the 2012 GE informational D/E rates was calculated for each program using student loan information from the GE Data and from NSLDS. For the annual earnings figures that were used in the debt-to-earnings calculations, the Department obtained from SSA the 2011 annual earnings, by program, of the 08/09 2012 D/E rates cohort. The 2012 GE informational D/E rates were calculated using the following criteria:

- N-size: 30
- Amortization schedule: 10 years for certificate and associate degree programs, 15 years for bachelor's and master's degree programs, and 20 years for doctoral and first professional programs
- Interest rate: 5.42 percent

The 2012 GE informational rates files also include debt-to-earnings rates calculated using variations of the n-size and amortization schedule criteria for comparative purposes.

The 2012 GE informational pCDR were calculated by program for students receiving title IV, HEA program funds who entered repayment between October 1, 2008, and September 30, 2009 (the ''09 2012 pCDR cohort'') on FFEL or Direct Loans for enrollment in a GE program. The 2012 GE informational pCDR calculations were made using student loan information for the 09 2012 pCDR cohort from the GE Data and NSLDS.

Unless otherwise specified, in accordance with the proposed regulations, the Department analyzed the 2012 GE informational D/E rates, and program level debt and earnings, only for those programs with 30 or more students who completed the program during an applicable cohort period—that is, those programs that met the minimum ''n-size—in this case between October 1, 2007, and September 30, 2009, as previously described. Of the 37,589 GE programs for which institutions reported program information to the Department in FY 2010, 5,539 met the minimum n-size of 30 for the 2012 GE informational D/E rates calculations.

The proposed regulations regarding pCDR do not include similar n-size requirements because various challenges and appeals are available for programs that have less than 30 borrowers included in the calculation. For the purpose of this regulatory impact analysis, however, we analyzed the 2012 GE informational pCDR only for those programs with an n-size of 30 or more borrowers who entered repayment on FFEL or Direct Loans for attendance in the program during an applicable cohort period. The applicable cohort period for the 2012 GE informational pCDR is October 1, 2008, to September 30, 2009, unless fewer than 30 students entered repayment during that year, in which case the calculation includes students who entered repayment in the previous two years. Of the 37,589 GE programs for which institutions reported program information to the Department in FY 2010, 6,815 met the minimum n-size of 30 borrowers for the 2012 GE informational pCDR calculations. In total, we estimate that 7,934 programs out of the 37,589 programs, representing 73 percent of students receiving title IV, HEA program funds in FY 2010, would be evaluated under the GE measures because they would receive D/E rates and pCDR, D/E rates only, or pCDR only.

For the purposes of this regulatory impact analysis, we analyzed the impact of the proposed regulations on GE programs by the following criteria:

- *Enrollment:* Number of students receiving title IV, HEA program funds for attendance in a program. In order to estimate enrollment, we used the FY 2010 enrollment of students receiving title IV, HEA programs funds.
- *6-digit classification of instructional program (''CIP'') code:* 6-digit CIP codes are categories of program type defined by the Department's National Center for Education Statistics. The first two digits of each 6-digit CIP code represent the corresponding 2-digit CIP code, which provides a higher-level categorization of program categories.
- *Sector:* Public non-profit, private non-profit, for-profit designation for each OPEID (institution) using NSLDS sector data as of November 2013.
- *Institution type:* Less than 2 years, 2 years, and 4 years or more designation for each OPEID using NSLDS sector data as of November 2013.
- *Credential level:* Certificate, associate degree, bachelor's degree, post-baccalaureate certificate, master's degree, doctoral degree, and first professional degree.

We examined the number of programs that would, under the proposed regulations, ''pass,'' ''fail,'' or fall in the ''zone'' based on the 2012 GE informational D/E rates. Similarly, we examined the number of programs that would, under the proposed regulations, ''pass'' or ''fail'' based on the 2012 GE informational pCDR.

Methodology

The estimated effects of the proposed regulations described in ''Analysis of the Proposed Regulations'' are based on the 2012 GE informational rates sample. The methodologies used for the informational data calculations depart slightly in some areas from the provisions in the proposed regulations as described in the following methodological notes related to the rates calculated for this regulatory impact analysis.

D/E rates calculations

$$\text{discretionary income rate} = \frac{\text{annual loan payment}}{\text{discretionary income}}$$

$$\text{annual earnings rate} = \frac{\text{annual loan payment}}{\text{annual earnings}}$$

[157] *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/gainfulemployment.html.*

• Both the annual earnings and discretionary income rates were calculated by program for students receiving title IV, HEA program funds who completed the program between October 1, 2007, and September 30, 2009, defined above as the 08/09 2012 D/E rates cohort.

• D/E rates were not calculated for programs with fewer than 10 students in the 08/09 2012 D/E rates cohort. Unless otherwise indicated, analysis of programs under the D/E rates measure in this regulatory impact analysis includes only programs with 30 or more students in the 08/09 2012 D/E rates cohort to reflect the D/E rates measure minimum n-size requirements in the proposed regulations.

• The SSA provided, at the program level, the 2011 calendar year mean and median annual earnings of the 08/09 2012 D/E rates cohort. Annual earnings include wages, salaries, tips, and self-employment income. The higher of the mean or median annual earnings was used as the annual earnings component of the annual earnings rate and discretionary income rate calculations.

• The annual loan payment was calculated by determining the median loan debt for the 08/09 2012 D/E rates cohort and amortizing that median debt amount over a 10-year period for undergraduate certificate, associate degree, and post-baccalaureate certificate programs, a 15-year period for bachelor's and master's degree programs, and a 20-year period for doctoral and first professional degree programs using an annual interest rate of 5.42 percent, which represents the average undergraduate and graduate unsubsidized interest rate on Federal Direct Unsubsidized Loans for the six years prior to the end of the applicable cohort period.

• Loan debt includes both FFEL and Direct Loans (except PLUS Loans made to parents or Direct Unsubsidized loans that were converted from TEACH Grants), private loans, and institutional loans that a student received for attendance in the GE program.

• In cases where students completed multiple GE programs at the same institution, all loan debt was attributed to the highest credentialed program that the students completed and the student was not included in the calculation of rates for the lower credentialed programs.

• In calculating median loan debt, the loan debt associated with a student was capped at an amount equivalent to the program's tuition and fees if: (1) tuition and fees information was provided by the institution, and (2) the amount of tuition and fees was less than the student's loan debt. This tuition and fees cap applied to approximately 15 percent of student records for the 08/09 2012 D/E rates cohort.

• For the discretionary earnings rate calculations, the Poverty Guideline is the Federal poverty guideline for an individual person in the continental United States as issued by the U.S. Department of Health and Human Services. We used the 2013 Guideline of $11,490 to conduct our analysis.

• Excluded from the calculations are students whose loans were in military deferment or who were enrolled at an institution of higher education for any amount of time in the calendar year for which earnings were retrieved or whose loans were discharged because of disability or death.

• The annual loan payment was truncated rather than rounded, with no digits after the decimal place.

• The annual earnings rate and discretionary income rate are truncated two digits after the decimal place.

pCDR calculations

$$\text{pCDR} = \frac{\text{borrowers whose loans are in default}}{\text{borrowers whose loans entered repayment}}$$

• The pCDR was calculated by program for students who entered repayment between October 1, 2008, and September 30, 2009, defined previously as the 09 2012 pCDR cohort, on FFEL or Direct Loans received for attendance in the GE program.

• *Borrowers whose loans entered repayment* represents the number of students, by program, in the 09 2012 pCDR cohort.

• *Borrowers whose loans are in default* represents the number of students, by program, in the 09 2012 pCDR cohort who defaulted on their FFEL or Direct Loans at any time within the first three fiscal years of repayment. For the 09 2012 pCDR cohort, this was the period between October 1, 2008, and September 30, 2011.

• For programs with fewer than 30 students in the 09 2012 pCDR cohort:

○ *Borrowers whose loans entered repayment* also includes students who entered repayment between October 1, 2006, to September 30, 2007 (2007 pCDR Cohort) and October 1, 2007, to September 30, 2008 (2008 pCDR Cohort) on FFEL or Direct Loans received for enrollment in the GE program; and

○ *Borrowers whose loans are in default* also includes the number of students, by program, in the 2007 and 2008 pCDR Cohorts who defaulted on their FFEL or Direct Loans at any time within the first three fiscal years of repayment. For the 2007 pCDR Cohort, this was the period between October 1, 2006, and September 30, 2009. For the 2008 pCDR Cohort, this was the period between October 1, 2007, and September 30, 2010.

• pCDR were not calculated for programs with less than 30 total combined students in the 2007 and 2008 pCDR Cohorts and 09 2012 pCDR cohort.

• The pCDRs are truncated to two digits after the decimal point.

Analysis of Impact of Student Demographics

In connection with the 2011 Final Rules and the public hearings and meetings of the negotiating committee for the current gainful employment negotiated rulemaking, we received comments that the results of programs under the proposed GE measures is driven in large part by the demographic characteristics of the students attending the programs rather than characteristics of the programs themselves. For the current rulemaking, we conducted an analysis to examine the contribution of demographic factors, including the program's estimated concentration of Pell Grant recipients and estimated concentration of minority students (black, American Indian, or Hispanic), to program performance under the proposed GE measures. Students qualify for Pell Grants based on a number of factors, with household income being a primary factor, making the share of students enrolled in a program who receive Pell Grants an indicator of the socioeconomic status of students in a program.

To examine the extent to which student demographic factors explain program performance under the proposed regulations, we developed two regression models using the 2012 GE

informational rates. In the first regression the dependent variable was the program's annual earnings rate. In the second regression, the dependent variable was the program's cohort default rate.

Two explanatory variables measured at the program-level were used for the annual earnings rate regression analysis. The first variable was the percentage of students enrolled in the program who were Pell eligible. The second variable was the percentage of students who were enrolled in the program and had minority status (black, American Indian, or Hispanic). The annual earnings rate regression analysis showed that the percentage of Pell Grant recipients and the percentage of students with minority status account for less than 2 percent of the variation in annual earnings rates.

The pCDR regression analysis used the same program-level percentage of Pell eligible students variable used in the annual earnings rate regression analysis. Since program-level race/ethnicity data that include both students who completed the program and those who did not are not available, institution-level minority race/ethnicity data were used as a proxy. The pCDR regression analysis showed that the percentage of Pell Grant recipients and the percentage of students with minority status accounted for less than 20 percent of the variation in pCDR.

These results suggest that performance on the GE measures under the proposed regulations is not substantially the result of Pell status or race and ethnicity.

The Department further looked at explanatory factors for both the annual earnings rate and pCDR by adding the following variables to the regressions: sector (public, private non-profit, or for-profit) and institution type (< 2-year, 2–3 year, ≥ 4-year), as well as additional demographic characteristics including percentage of title IV recipients that were female, above the age of 24, and had a zero estimated family contribution. The Department found that by including these additional variables, 36 percent of the variance in the annual earnings rate could be explained and 33 percent of the variance in pCDR could be explained.

Analysis of the 2012 GE Informational Rates

The 2012 GE informational rates include only programs from the FY 2010 reporting that meet the minimum n-size criteria. Of the 37,589 GE programs in the FY 2010 reporting with total enrollment of 3,985,329 students receiving title IV, HEA program funds, 7,934 programs, representing 2,914,376 students receiving title IV, HEA program funds, were evaluated in the 2012 GE informational rates.

Table 4 provides, by 2-digit CIP code, the number of programs in the 2012 GE informational rates sample. Table 5 provides, by 2-digit CIP code, the number of 2012 GE informational rate programs as a percentage of all GE programs for which institutions reported program information to the Department in FY 2010. Table 6 provides, by 2-digit CIP code, the title IV enrollment of programs in the 2012 GE informational rates sample. Table 7 provides, by 2-digit CIP code, title IV enrollment of programs in the 2012 GE informational rates sample as a percentage of all title IV enrollment in GE programs for which institutions reported program information to the Department in FY 2010.

Table 4: 2012 GE Informational Rates Program Count by 2-Digit CIP Code

2-Digit CIP Code	2-Digit CIP Name	Public		Private		Proprietary							
		Ugrad cert	Post bacc cert	Ugrad cert	Post bacc cert	Ugrad cert	Associates	Bachelor's	Post bacc cert	Master's	Doctoral	First prof	Total
51	Health Professions and Related Sciences	850	4	146	25	1,506	582	51	7	41	7	3	3,222
52	Business Management and Administrative Services	86	3	18	7	148	346	186	11	59	14	1	879
12	Personal and Miscellaneous Services	103	0	13	0	954	79	18	0	0	0	3	1,170
47	Mechanics and Repairs	93	0	16	0	169	56	0	0	0	0	0	334
11	Computer and Information Sciences	8	0	8	1	81	185	125	1	17	2	0	428
15	Engineering Related Technologies	14	0	10	0	74	73	10	0	1	0	0	182
50	Visual and Performing Arts	4	0	6	3	40	165	174	0	14	0	0	406
13	Education	11	20	9	27	7	7	9	5	44	19	0	158
43	Protective Services	99	0	2	0	18	114	53	1	13	2	0	302
48	Precision Production Trades	40	0	5	0	22	8	0	0	0	0	0	75
46	Construction Trades	63	0	10	0	53	13	0	0	0	0	0	139
22	Law and Legal Services	14	1	4	6	46	116	17	1	1	1	6	213
19	Home Economics	26	0	6	0	7	2	2	0	2	1	0	46

1	Agricultural Business and Production	3	0	1	0	4	0	1	0	0	0	0	9
10	Telecommunications Technologies	1	0	1	0	16	29	34	0	1	0	0	82
44	Public Administration and Services	4	2	1	1	0	3	3	0	7	5	0	26
9	Communications	0	0	0	0	8	5	21	0	1	0	0	35
49	Transportation and Material Moving Workers	30	0	3	0	19	2	0	0	0	0	0	54
31	Parks, Recreation, Leisure, and Fitness Studies	1	1	0	0	7	12	3	0	2	0	0	26
24	Liberal Arts and Sciences, General Studies and Humanities	13	0	0	1	0	6	1	0	1	1	0	23
30	Multi-interdisciplinary Studies	2	2	0	0	0	2	4	1	1	0	0	12
45	Social Sciences and History	1	0	1	1	1	2	5	0	1	0	0	12
42	Psychology	0	1	0	3	0	2	9	2	17	15	0	49
14	Engineering	0	1	0	1	0	3	3	0	1	0	0	9
16	Foreign Languages and Literature	1	0	0	0	0	0	0	0	0	0	0	1
23	English Language and Literature/Letters	0	0	5	0	4	1	1	0	0	0	0	11
39	Theological Studies and Religious Vocations	0	0	2	0	0	0	0	0	0	0	0	2
26	Biological and Biomedical Sciences	1	0	0	0	1	0	2	0	0	0	0	4
3	Conservation and Renewable Natural Resources	0	0	0	0	0	0	2	0	0	0	0	2
41	Science Technologies	2	0	0	0	1	1	0	0	0	0	0	4

4	Architecture and Related Programs	0	0	0	1	0	0	0	0	1	0	1	3
5	Area, Cultural, Ethnic, and Gender Studies	1	0	0	0	0	0	0	0	0	0	0	1
25	Library Studies	0	0	0	1	0	0	0	0	0	0	0	1
40	Physical Sciences	1	0	0	0	0	0	0	0	0	0	0	1
54	History	0	0	0	0	0	0	1	0	2	0	0	3
27	Mathematics and Statistics	0	0	0	0	0	0	0	0	0	0	0	0
38	Philosophy and Religious Studies	0	0	0	0	0	0	2	0	0	0	0	2
32	Basic Skills	0	0	0	0	2	0	0	0	0	0	0	2
34	Health-related Knowledge and Skills	0	0	0	0	4	0	0	0	0	0	0	4
36	Leisure and Recreational Activities	0	0	0	0	0	0	0	0	0	0	0	0
28	Reserve Officer Training Corps	0	0	0	0	0	0	0	0	0	0	0	0
60	Residency Programs	0	0	0	0	0	0	0	0	0	0	0	0
21	Technology/Education Industrial Arts	0	0	0	0	0	1	1	0	0	0	0	2
29	Military Technologies	0	0	0	0	0	0	0	0	0	0	0	0
33	Citizenship Activities	0	0	0	0	0	0	0	0	0	0	0	0
37	Personal Awareness and Self Improvement	0	0	0	0	0	0	0	0	0	0	0	0
53	High School/Secondary Diplomas and Certificates	0	0	0	0	0	0	0	0	0	0	0	0
Total		1,472	35	267	78	3,192	1,815	738	29	227	67	14	7,934

Table 5: 2012 GE Informational Rates Programs as a Percentage of All Programs in FY 2010 Reporting

2-Digit CIP Code	2-Digit CIP Name	Public		Private		Proprietary							
		Ugrad cert	Post bacc cert	Ugrad cert	Post bacc cert	Ugrad cert	Associates	Bachelor's	Post bacc cert	Master's	Doctoral	First prof	Total
51	Health Professions and Related Sciences	18.0%	1.4%	36.1%	9.1%	60.4%	54.0%	32.9%	43.8%	47.1%	38.9%	27.3%	33.7%
52	Business Management and Administrative Services	2.5%	2.6%	14.2%	4.2%	31.2%	53.3%	49.5%	36.7%	49.6%	60.9%	100.0%	16.0%
12	Personal and Miscellaneous Services	9.7%	0.0%	27.7%	0.0%	40.5%	62.2%	64.3%	-	0.0%	-	17.6%	32.2%
47	Mechanics and Repairs	4.1%	0.0%	29.6%	-	63.5%	66.7%	-	-	-	-	-	12.6%
11	Computer and Information Sciences	0.5%	0.0%	15.4%	2.6%	27.7%	54.1%	57.1%	14.3%	43.6%	40.0%	-	16.1%
15	Engineering Related Technologies	0.8%	0.0%	23.8%	0.0%	51.7%	50.3%	43.5%	0.0%	100.0%	-	-	8.8%
50	Visual and Performing Arts	0.7%	0.0%	11.3%	4.2%	37.4%	69.3%	63.3%	-	36.8%	0.0%	-	29.1%
13	Education	2.8%	6.7%	31.0%	6.9%	13.5%	36.8%	15.8%	22.7%	56.4%	63.3%	0.0%	11.6%
43	Protective Services	11.4%	0.0%	13.3%	0.0%	32.7%	60.3%	47.3%	16.7%	56.5%	66.7%	-	23.2%
48	Precision Production Trades	3.8%	-	22.7%	-	53.7%	61.5%	-	-	-	-	-	6.7%
46	Construction Trades	6.6%	-	41.7%	-	54.1%	50.0%	0.0%	-	-	-	-	12.6%
22	Law and Legal Services	4.5%	20.0%	10.0%	31.6%	39.0%	58.9%	42.5%	20.0%	50.0%	100.0%	60.0%	28.4%
19	Home Economics	3.9%	0.0%	50.0%	0.0%	46.7%	18.2%	15.4%	0.0%	100.0%	100.0%	-	6.2%
1	Agricultural Business and Production	0.6%	0.0%	20.0%	-	57.1%	0.0%	100.0%	-	-	-	-	1.7%

10	Telecommunications Technologies	0.3%	-	25.0%	0.0%	51.6%	69.0%	61.8%	-	33.3%	-	-	16.0%
44	Public Administration and Services	2.7%	4.9%	14.3%	4.8%	-	37.5%	27.3%	0.0%	43.8%	83.3%	-	10.1%
9	Communications	0.0%	0.0%	0.0%	0.0%	42.1%	33.3%	56.8%	-	20.0%	-	-	13.8%
49	Transportation and Material Moving Workers	17.6%	-	60.0%	0.0%	67.9%	28.6%	0.0%	0.0%	0.0%	-	-	24.4%
31	Parks, Recreation, Leisure, and Fitness Studies	0.9%	20.0%	0.0%	0.0%	19.4%	57.1%	20.0%	0.0%	100.0%	-	-	13.3%
24	Liberal Arts and Sciences, General Studies and Humanities	10.0%	0.0%	0.0%	25.0%	0.0%	27.3%	5.9%	0.0%	25.0%	100.0%	-	12.4%
30	Multi-interdisciplinary Studies	3.3%	3.8%	0.0%	0.0%	0.0%	100.0%	26.7%	50.0%	33.3%	-	-	6.6%
45	Social Sciences and History	1.3%	0.0%	25.0%	4.5%	100.0%	50.0%	27.8%	-	33.3%	-	-	6.7%
42	Psychology	0.0%	3.4%	0.0%	5.5%	-	66.7%	56.3%	33.3%	63.0%	71.4%	-	28.8%
14	Engineering	0.0%	2.3%	0.0%	7.1%	0.0%	50.0%	20.0%	0.0%	12.5%	-	-	6.8%
16	Foreign Languages and Literature	1.0%	0.0%	0.0%	0.0%	0.0%	-	0.0%	-	-	-	-	0.8%
23	English Language and Literature/Letters	0.0%	0.0%	50.0%	0.0%	57.1%	50.0%	10.0%	-	0.0%	-	-	9.5%
39	Theological Studies and Religious Vocations	0.0%	-	4.4%	0.0%	-	0.0%	0.0%	-	0.0%	0.0%	-	1.9%
26	Biological and Biomedical Sciences	2.9%	0.0%	0.0%	0.0%	100.0%	0.0%	20.0%	-	-	-	-	4.3%
3	Conservation and Renewable Natural Resources	0.0%	0.0%	0.0%	0.0%	0.0%	-	25.0%	0.0%	0.0%	-	-	2.4%
41	Science Technologies	2.9%	0.0%	-	-	50.0%	20.0%	-	-	-	-	-	5.1%
4	Architecture and Related Programs	0.0%	0.0%	0.0%	16.7%	0.0%	-	0.0%	-	50.0%	-	100.0%	5.1%

5	Area, Cultural, Ethnic, and Gender Studies	5.0%	0.0%	0.0%	0.0%	-	-	0.0%	-	-	-	-	1.8%
25	Library Studies	0.0%	0.0%	-	14.3%	-	-	0.0%	-	-	-	-	2.4%
40	Physical Sciences	8.3%	0.0%	-	0.0%	0.0%	-	0.0%	-	-	-	-	3.2%
54	History	0.0%	0.0%	-	0.0%	-	0.0%	16.7%	0.0%	50.0%	-	-	12.0%
27	Mathematics and Statistics	0.0%	0.0%	0.0%	0.0%	-	0.0%	0.0%	-	-	-	-	0.0%
38	Philosophy and Religious Studies	-	0.0%	0.0%	0.0%	-	-	50.0%	-	0.0%	0.0%	-	9.5%
32	Basic Skills	0.0%	0.0%	0.0%	-	66.7%	-	-	-	-	-	-	13.3%
34	Health-related Knowledge and Skills	0.0%	-	0.0%	0.0%	100.0%	-	-	-	-	-	-	30.8%
36	Leisure and Recreational Activities	0.0%	0.0%	0.0%	-	-	-	0.0%	-	0.0%	-	-	0.0%
28	Reserve Officer Training Corps	0.0%	-	-	-	0.0%	0.0%	0.0%	0.0%	-	-	-	0.0%
60	Residency Programs	-	0.0%	-	0.0%	-	-	-	-	-	-	-	0.0%
21	Technology/Education Industrial Arts	-	0.0%	-	0.0%	-	100.0%	100.0%	-	-	-	-	50.0%
29	Military Technologies	-	-	-	-	0.0%	0.0%	0.0%	-	-	-	-	0.0%
33	Citizenship Activities	0.0%	0.0%	-	-	-	-	-	-	-	-	-	0.0%
37	Personal Awareness and Self Improvement	0.0%	-	-	-	-	-	-	-	-	-	-	0.0%
53	High School/Secondary Diplomas and Certificates	0.0%	-	-	-	-	-	-	-	-	-	-	0.0%
Total		6.8%	2.9%	25.1%	6.1%	47.9%	55.6%	47.0%	26.6%	46.9%	59.3%	34.1%	21.1%

Table 6: 2012 GE Informational Rates Title IV Enrollment by 2-Digit CIP Code

2-Digit CIP Code	2-Digit CIP Name	Public		Private		Proprietary							
		Ugrad cert	Post bacc cert	Ugrad cert	Post bacc cert	Ugrad cert	Associates	Bachelor's	Post bacc cert	Master's	Doctoral	First prof	Total
51	Health Professions and Related Sciences	113,626	140	28,436	1,161	384,202	270,444	79,668	557	35,857	4,345	1,386	919,822
52	Business Management and Administrative Services	12,074	191	2,669	822	11,584	219,135	293,649	1,923	103,118	11,962	0	657,127
12	Personal and Miscellaneous Services	11,200	0	1,925	0	158,795	31,955	5,464	0	0	0	312	209,651
43	Protective Services	13,870	0	336	0	1,137	102,779	72,397	30	6,965	950	0	198,464
11	Computer and Information Sciences	1,391	0	641	190	7,771	91,363	77,521	66	5,090	543	0	184,576
47	Mechanics and Repairs	6,429	0	2,734	0	72,646	13,332	0	0	0	0	0	95,141
13	Education	2,751	1,681	916	2,987	809	18,400	27,096	1,276	53,746	17,574	0	127,236
50	Visual and Performing Arts	185	0	677	86	5,228	33,401	58,754	0	2,426	0	0	100,757
15	Engineering Related Technologies	886	0	991	0	18,529	45,810	11,739	0	695	0	0	78,650
42	Psychology	0	275	0	157	0	415	34,267	152	15,573	11,544	0	62,383
22	Law and Legal Services	1,818	156	227	657	3,463	23,383	7,241	113	642	591	5,291	43,582
30	Multi-interdisciplinary Studies	516	198	0	0	0	32,287	21,532	38	1,791	0	0	56,362
19	Home Economics	8,086	0	829	0	488	503	483	0	1,442	446	0	12,277
44	Public Administration and Services	509	153	64	16	0	15,839	15,629	0	8,299	3,802	0	44,311
46	Construction Trades	3,484	0	1,778	0	10,572	1,567	0	0	0	0	0	17,401

48	Precision Production Trades	2,858	0	1,165	0	5,042	907	0	0	0	0	0	9,972
10	Telecommunications Technologies	435	0	52	0	3,004	3,322	9,613	0	472	0	0	16,898
24	Liberal Arts and Sciences, General Studies and Humanities	9,201	0	0	384	0	7,817	34	0	18	174	0	17,628
45	Social Sciences and History	0	0	66	101	89	55	12,959	0	487	0	0	13,757
23	English Language and Literature/Letters	0	0	1,101	0	1,992	3,667	400	0	0	0	0	7,160
9	Communications	0	0	0	0	1,896	585	5,814	0	180	0	0	8,475
49	Transportation and Material Moving Workers	1,529	0	586	0	7,459	294	0	0	0	0	0	9,868
31	Parks, Recreation, Leisure, and Fitness Studies	34	815	0	0	534	2,827	2,776	0	645	0	0	7,631
14	Engineering	0	45	0	164	0	101	5,002	0	31	0	0	5,343
1	Agricultural Business and Production	158	0	94	0	205	0	42	0	0	0	0	499
54	History	0	0	0	0	0	0	648	0	1,293	0	0	1,941
4	Architecture and Related Programs	0	0	0	37	0	0	0	0	93	0	532	662
3	Conservation and Renewable Natural Resources	0	0	0	0	0	0	1,068	0	0	0	0	1,068
16	Foreign Languages and Literature	71	0	0	0	0	0	0	0	0	0	0	71
38	Philosophy and Religious Studies	0	0	0	0	0	0	1,846	0	0	0	0	1,846
41	Science Technologies	192	0	0	0	128	125	0	0	0	0	0	445
26	Biological and Biomedical Sciences	74	0	0	0	71	0	398	0	0	0	0	543

39	Theological Studies and Religious Vocations	0	0	167	0	0	0	0	0	0	0	0	167
34	Health-related Knowledge and Skills	0	0	0	0	1,320	0	0	0	0	0	0	1,320
21	Technology/Education Industrial Arts	0	0	0	0	0	761	305	0	0	0	0	1,066
25	Library Studies	0	0	0	89	0	0	0	0	0	0	0	89
32	Basic Skills	0	0	0	0	131	0	0	0	0	0	0	131
5	Area, Cultural, Ethnic, and Gender Studies	28	0	0	0	0	0	0	0	0	0	0	28
36	Leisure and Recreational Activities	0	0	0	0	0	0	0	0	0	0	0	0
28	Reserve Officer Training Corps	0	0	0	0	0	0	0	0	0	0	0	0
40	Physical Sciences	28	0	0	0	0	0	0	0	0	0	0	28
27	Mathematics and Statistics	0	0	0	0	0	0	0	0	0	0	0	0
29	Military Technologies	0	0	0	0	0	0	0	0	0	0	0	0
60	Residency Programs	0	0	0	0	0	0	0	0	0	0	0	0
33	Citizenship Activities	0	0	0	0	0	0	0	0	0	0	0	0
37	Personal Awareness and Self Improvement	0	0	0	0	0	0	0	0	0	0	0	0
53	High School/Secondary Diplomas and Certificates	0	0	0	0	0	0	0	0	0	0	0	0
Total		191,433	3,654	45,454	6,851	697,095	921,074	746,345	4,155	238,863	51,931	7,521	2,914,376

Table 7: 2012 GE Informational Rates Title IV Enrollment as a Percentage of All Title IV Enrollment in FY 2010 Reporting

2-Digit CIP Code	2-Digit CIP Name	Public		Private		Proprietary							
		Ugrad cert	Post bacc cert	Ugrad cert	Post bacc cert	Ugrad cert	Associates	Bachelor's	Post bacc cert	Master's	Doctoral	First prof	Total
51	Health Professions and Related Sciences	41.0%	5.7%	80.4%	37.1%	86.2%	88.4%	84.3%	75.8%	85.6%	86.3%	15.2%	75.3%
52	Business Management and Administrative Services	9.3%	11.3%	68.4%	37.7%	71.6%	94.9%	95.1%	88.0%	94.4%	77.9%	-	80.1%
12	Personal and Miscellaneous Services	25.1%	-	60.7%	0.0%	80.0%	91.7%	93.3%	-	0.0%	-	54.9%	72.9%
43	Protective Services	24.0%	0.0%	40.0%	0.0%	35.4%	89.2%	84.5%	33.3%	86.0%	93.7%	-	72.9%
11	Computer and Information Sciences	3.8%	0.0%	51.2%	43.6%	53.0%	91.2%	87.3%	29.7%	83.6%	70.4%	-	74.1%
47	Mechanics and Repairs	9.6%	0.0%	70.5%	-	91.9%	88.6%	-	-	-	-	-	57.6%
13	Education	20.1%	26.4%	81.5%	43.1%	44.0%	85.7%	92.5%	79.0%	91.5%	81.1%	0.0%	78.2%
50	Visual and Performing Arts	1.2%	0.0%	61.3%	15.7%	79.5%	91.9%	87.8%	-	76.6%	0.0%	-	77.7%
15	Engineering Related Technologies	3.5%	0.0%	67.0%	0.0%	84.7%	93.6%	98.1%	0.0%	100.0%	-	-	71.1%
42	Psychology	0.0%	38.7%	0.0%	14.7%	-	89.6%	93.0%	69.7%	83.4%	88.9%	-	86.6%
22	Law and Legal Services	17.1%	66.4%	29.6%	75.1%	68.6%	74.1%	91.1%	53.1%	88.7%	100.0%	92.1%	67.8%
30	Multi-interdisciplinary Studies	35.6%	39.1%	0.0%	0.0%	0.0%	100.0%	90.6%	32.5%	86.3%	-	-	93.1%
19	Home Economics	16.0%	0.0%	87.6%	0.0%	62.2%	50.4%	17.0%	0.0%	100.0%	100.0%	-	21.0%

44	Public Administration and Services	9.1%	33.4%	43.5%	6.9%	-	85.0%	82.8%	0.0%	80.3%	96.1%	-	76.0%
46	Construction Trades	16.0%	-	89.4%	-	79.7%	62.0%	0.0%	-	-	-	-	43.9%
48	Precision Production Trades	9.8%	-	85.9%	-	76.8%	93.3%	-	-	-	-	-	26.3%
10	Telecommunications Technologies	4.5%	-	49.5%	0.0%	80.5%	68.6%	75.5%	-	96.3%	-	-	53.7%
24	Liberal Arts and Sciences, General Studies and Humanities	63.3%	0.0%	0.0%	88.3%	0.0%	85.2%	2.6%	0.0%	13.0%	100.0%	-	68.1%
45	Social Sciences and History	0.0%	0.0%	86.8%	25.8%	100.0%	90.2%	87.2%	-	65.8%	-	-	79.3%
23	English Language and Literature/Letters	0.0%	0.0%	96.4%	0.0%	96.7%	100.0%	27.1%	-	0.0%	-	-	41.9%
9	Communications	0.0%	0.0%	0.0%	0.0%	92.7%	67.0%	69.0%	-	65.0%	-	-	54.5%
49	Transportation and Material Moving Workers	37.2%	-	80.8%	0.0%	99.2%	67.4%	0.0%	0.0%	0.0%	-	-	73.7%
31	Parks, Recreation, Leisure, and Fitness Studies	1.4%	98.9%	0.0%	0.0%	25.8%	86.4%	85.1%	0.0%	100.0%	-	-	60.0%
14	Engineering	0.0%	11.7%	0.0%	56.7%	0.0%	67.8%	95.4%	0.0%	17.8%	-	-	73.5%
1	Agricultural Business and Production	2.4%	0.0%	81.0%	-	86.9%	0.0%	100.0%	-	-	-	-	7.2%
54	History	0.0%	0.0%	-	0.0%	-	0.0%	26.2%	0.0%	79.4%	-	-	44.9%
4	Architecture and Related Programs	0.0%	0.0%	0.0%	41.6%	0.0%	-	0.0%	-	95.9%	-	100.0%	18.1%
3	Conservation and Renewable Natural Resources	0.0%	0.0%	0.0%	0.0%	0.0%	-	51.5%	0.0%	0.0%	-	-	29.2%
16	Foreign Languages and Literature	2.8%	0.0%	0.0%	0.0%	0.0%	-	0.0%	-	-	-	-	2.6%
38	Philosophy and Religious Studies	-	0.0%	0.0%	0.0%	-	-	86.0%	-	0.0%	0.0%	-	70.1%
41	Science Technologies	12.0%	0.0%	-	-	75.7%	29.6%	-	-	-	-	-	20.3%
26	Biological and Biomedical Sciences	15.4%	0.0%	0.0%	0.0%	100.0%	0.0%	55.4%	-	-	-	-	31.8%

39	Theological Studies and Religious Vocations	0.0%	-	21.4%	0.0%	-	0.0%	0.0%	-	0.0%	0.0%	-	10.4%
34	Health-related Knowledge and Skills	0.0%	-	0.0%	0.0%	100.0%	-	-	-	-	-	-	91.0%
21	Technology/Education Industrial Arts	-	0.0%	-	0.0%	-	100.0%	100.0%	-	-	-	-	99.4%
25	Library Studies	0.0%	0.0%	-	50.3%	-	-	0.0%	-	-	-	-	10.1%
32	Basic Skills	0.0%	0.0%	0.0%	-	35.8%	-	-	-	-	-	-	23.7%
5	Area, Cultural, Ethnic, and Gender Studies	21.1%	0.0%	0.0%	0.0%	-	-	0.0%	-	-	-	-	9.2%
36	Leisure and Recreational Activities	0.0%	0.0%	0.0%	-	-	-	0.0%	-	0.0%	-	-	0.0%
28	Reserve Officer Training Corps	0.0%	-	-	-	0.0%	0.0%	0.0%	0.0%	-	-	-	0.0%
40	Physical Sciences	40.0%	0.0%	-	0.0%	-	-	0.0%	-	-	-	-	17.8%
27	Mathematics and Statistics	0.0%	0.0%	0.0%	0.0%	-	0.0%	0.0%	-	-	-	-	0.0%
29	Military Technologies	-	-	-	-	0.0%	0.0%	0.0%	-	-	-	-	0.0%
60	Residency Programs	-	0.0%	-	0.0%	-	-	-	-	-	-	-	0.0%
33	Citizenship Activities	0.0%	0.0%	-	-	-	-	-	-	-	-	-	0.0%
37	Personal Awareness and Self Improvement	0.0%	-	-	-	-	-	-	-	-	-	-	0.0%
53	High School/Secondary Diplomas and Certificates	0.0%	-	-	-	-	-	-	-	-	-	-	0.0%
Total		22.6%	22.8%	74.9%	38.0%	83.6%	90.2%	89.0%	72.8%	89.7%	83.7%	47.1%	73.1%

Table 8 provides the number of 2012 informational rate programs that would be evaluated under the proposed regulations under the D/E rates measure or the pCDR measure after application of the exclusions and n-size requirements as explained in the "Methodology" portion of this section.

Table 8: Count and Title IV Enrollment of Programs in 2012 GE Informational Rates Sample

Sector	IHE Type	Number of Programs	Enrollment	Number of Programs Evaluated for D/E	Enrollment for Programs Evaluated for D/E	Number of programs evaluated for pCDR	Enrollment for programs evaluated for pCDR	Number of programs evaluated for pCDR or D/E	Enrollment for programs evaluated for pCDR or D/E
Public	Total	22,996	863,892	1,093	142,400	902	121,650	1,507	195,087
	< 2 year	1,380	25,083	157	11,439	119	9,489	179	12,203
	2-3 year	18,791	779,997	824	119,615	701	104,399	1,178	169,275
	4-year	2,825	58,812	112	11,346	82	7,762	150	13,609
Private	Total	2,343	78,720	253	45,696	262	40,039	345	52,305
	< 2 year	134	11,560	49	9,609	33	5,655	54	9,796
	2-3 year	257	14,671	74	10,324	67	8,894	87	10,969
	4-year	1,952	52,489	130	25,763	162	25,490	204	31,540
For-profit	Total	12,250	3,042,717	4,193	2,333,187	5,651	2,583,388	6,082	2,666,984
	< 2 year	2,885	280,463	1,109	216,870	1,034	196,833	1,284	225,007
	2-3 year	4,557	621,810	1,677	471,406	2,220	485,513	2,346	518,687
	4-year	4,808	2,140,444	1,407	1,644,911	2,397	1,901,042	2,452	1,923,290
Overall Total		37,589	3,985,329	5,539	2,521,283	6,815	2,745,077	7,934	2,914,376

Table 9 shows the 2012 GE informational rate programs that are passing, in the zone, or failing under the proposed GE measures.

Table 9: 2012 GE Informational Rates Program Results

Sector	IHE Type	Credential Level	Programs	Passing Programs	Zone Programs	Failing Programs	Enrollment	Enrollment in Passing Programs	Enrollment in Zone Programs	Enrollment in Failing Programs
Public	Total		1,507	1,453	1	53	195,087	182,165	221	12,701
	< 2 year	Certificate	179	175	0	4	12,203	12,007	0	196
	2-3 year	Certificate	1,178	1,132	0	46	169,275	156,966	0	12,309
	4-year	Certificate	115	111	1	3	9,955	9,538	221	196
		Post-Bacc Certificate	35	35	0	0	3,654	3,654	0	0
Private	Total		345	312	4	29	52,305	45,658	1,810	4,837
	< 2 year	Certificate	54	45	1	8	9,796	8,172	396	1,228
	2-3 year	Certificate	86	81	2	3	10,952	9,374	1,304	274
		Post-Bacc Certificate	1	1	0	0	17	17	0	0
	4-year	Certificate	127	109	1	17	24,706	21,381	110	3,215
		Post-Bacc Certificate	77	76	0	1	6,834	6,714	0	120
For-Profit	Total		6,082	4,204	660	1,218	2,666,984	1,541,550	298,209	827,225
	< 2 year	Certificate	1,275	974	123	178	224,500	147,951	33,001	43,548
		Associate's	5	3	1	1	195	142	0	53
		1st Professional Degree	4	3	0	1	312	312	0	0
	2-3 year	Certificate	1,505	1,061	157	287	379,498	244,903	50,777	83,818
		Associate's	839	533	128	178	139,033	67,925	26,832	44,276
		Post-Bacc Certificate	2	2	0	0	156	156	0	0

4-year	Certificate	412	282	54	76	93,097	54,361	27,100		11,636
	Associate's	971	532	132	307	781,846	153,818	88,872		539,156
	Bachelor's	738	504	57	177	746,345	578,666	66,749		100,930
	Post-Bacc Certificate	27	27	0	0	3,999	3,999	0		0
	Master's	227	214	3	10	238,863	235,201	1,240		2,422
	Doctoral	67	65	2	0	51,931	51,009	922		0
	1st Professional Degree	10	4	3	3	7,209	3,107	2,716		1,386
Overall Total		7,934	5,969	665	1,300	2,914,376	1,769,373	300,240		844,763

Tables 9a and 9b show by program count and title IV enrollment respectively, for programs in the 2012 GE informational rate programs that fail, results disaggregated by the metric that causes failure.

Table 9a: 2012 GE Informational Rates Program Results - Failing Programs Disaggregated (Program Count)

Sector	IHE Type	Credential Level	Programs	Passing Programs	Zone Programs	Failing Programs	Programs Failing D/E	Programs Failing pCDR	Programs Failing Both D/E and PCDR
Public	Total		1,507	1,453	1	53	1	52	0
	< 2 year	Certificate	179	175	0	4	0	4	0
	2-3 year	Certificate	1,178	1,132	0	46	0	46	0
	4-year	Certificate	115	111	1	3	1	2	0
		Post-Bacc Certificate	35	35	0	0	0	0	0
Private	Total		345	312	4	29	3	26	0
	< 2 year	Certificate	54	45	1	8	0	8	0
	2-3 year	Certificate	86	81	2	3	0	3	0
		Post-Bacc Certificate	1	1	0	0	0	0	0
	4-year	Certificate	127	109	1	17	2	15	0
		Post-Bacc Certificate	77	76	0	1	1	0	0
For-Profit	Total		6,082	4,204	660	1,218	447	865	94
	< 2 year	Certificate	1,275	974	123	178	28	158	8
		Associate's	5	3	1	1	0	1	0
		1st Professional Degree	4	3	0	1	0	1	0
	2-3 year	Certificate	1,505	1,061	157	287	37	258	8
		Associate's	839	533	128	178	63	132	17
		Post-Bacc Certificate	2	2	0	0	0	0	0

	4-year	Certificate	412	282	54	76	19	61	4
		Associate's	971	532	132	307	144	212	49
		Bachelor's	738	504	57	177	143	42	8
		Post-Bacc Certificate	27	27	0	0	0	0	0
		Master's	227	214	3	10	10	0	0
		Doctoral	67	65	2	0	0	0	0
		1st Professional Degree	10	4	3	3	3	0	0
Overall Total			7,934	5,969	665	1,300	451	943	94

Table 9b: 2012 GE Informational Rates Program Results - Failing Programs Disaggregated (Title IV Enrollment)

Sector	IHE Type	Credential Level	Enrollment	Enrollment in Passing Programs	Enrollment in Zone Programs	Enrollment in Failing Programs	Enrollment in Programs Failing D/E	Enrollment in Programs Failing pCDR	Enrollment in Programs that Fail Both Metrics
Public	Total		195,087	182,165	221	12,701	46	12,655	0
	< 2 year	Certificate	12,203	12,007	0	196	0	196	0
	2-3 year	Certificate	169,275	156,966	0	12,309	0	12,309	0
	4-year	Certificate	9,955	9,538	221	196	46	150	0
		Post-Bacc Certificate	3,654	3,654	0	0	0	0	0
Private	Total		52,305	45,658	1,810	4,837	1,115	3,722	0

	< 2 year	Certificate	9,796	8,172	396	1,228	0	1,228	0
	2-3 year	Certificate	10,952	9,374	1,304	274	0	274	0
		Post-Bacc Certificate	17	17	0	0	0	0	0
	4-year	Certificate	24,706	21,381	110	3,215	995	2,220	0
		Post-Bacc Certificate	6,834	6,714	0	120	120	0	0
For-Profit	Total		2,666,984	1,541,550	298,209	827,225	357,982	661,920	192,677
	< 2 year	Certificate	224,500	147,951	33,001	43,548	6,147	39,386	1,985
		Associate's	195	142	0	53	0	53	0
		1st Professional Degree	312	312	0	0	0	0	0
	2-3 year	Certificate	379,498	244,903	50,777	83,818	8,145	79,344	3,671
		Associate's	139,033	67,925	26,832	44,276	26,320	26,849	8,893
		Post-Bacc Certificate	156	156	0	0	0	0	0
	4-year	Certificate	93,097	54,361	27,100	11,636	4,752	7,379	495
		Associate's	781,846	153,818	88,872	539,156	236,593	472,517	169,954
		Bachelor's	746,345	578,666	66,749	100,930	72,217	36,392	7,679
		Post-Bacc Certificate	3,999	3,999	0	0	0	0	0
		Master's	238,863	235,201	1,240	2,422	2,422	0	0
		Doctoral	51,931	51,009	922	0	0	0	0
		1st Professional Degree	7,209	3,107	2,716	1,386	1,386	0	0
Overall Total			2,914,376	1,769,373	300,240	844,763	359,143	678,297	192,677

Table 10 provides the weighted averages of the median annual loan payment, higher of the mean or median annual earnings and pCDR of programs in the 2012 GE informational rates sample.

Table 10: Average Annual Loan Payment, Earnings, and pCDR of 2012 GE Informational Rates Sample

Credential Level	Status	Metric	All	Public	Private	For-Profit
01-UNDERGRADUATE CERTIFICATE	Pass	Annual Loan Payment	$789	$320	$662	$900
		Earnings	$20,613	$31,672	$20,027	$18,267
		Default Rate	17	12	14	18
	Zone	Annual Loan Payment	$1,360	$2,571	$1,420	$1,358
		Earnings	$14,615	$23,577	$16,392	$14,571
		Default Rate	21	8	13	21
	Fail	Annual Loan Payment	$1,222	$376	$619	$1,248
		Earnings	$15,792	$17,875	$13,885	$15,831
		Default Rate	34	35	36	34
	All	Annual Loan Payment	$923	$323	$688	$1,028
		Earnings	$19,153	$31,501	$19,333	$17,309
		Default Rate	21	13	16	22
02-ASSOCIATES DEGREE	Pass	Annual Loan Payment	$1,629			$1,629
		Earnings	$31,778			$31,778
		Default Rate	17			17
	Zone	Annual Loan Payment	$2,095			$2,095
		Earnings	$21,628			$21,628
		Default Rate	20			20
	Fail	Annual Loan Payment	$3,042			$3,042
		Earnings	$25,741			$25,741
		Default Rate	35			35
	All	Annual Loan Payment	$2,400			$2,400
		Earnings	$26,847			$26,847
		Default Rate	28			28
03-BACHELORS DEGREE	Pass	Annual Loan Payment	$2,431			$2,431
		Earnings	$50,734			$50,734
		Default Rate	19			19
	Zone	Annual Loan Payment	$3,080			$3,080
		Earnings	$29,443			$29,443

		Default Rate	20			20
	Fail	Annual Loan Payment	$4,241			$4,241
		Earnings	$24,661			$24,661
		Default Rate	24			24
	All	Annual Loan Payment	$2,790			$2,790
		Earnings	$44,613			$44,613
		Default Rate	19			19
04-POST BACCALAUREATE CERTIFICATE	Pass	Annual Loan Payment	$787	$594	$947	$560
		Earnings	$67,799	$67,489	$69,378	$63,091
		Default Rate	3	2	3	5
	Fail	Annual Loan Payment	$2,659		$2,659	
		Earnings	$19,845		$19,845	
		Default Rate	3		3	
	All	Annual Loan Payment	$795	$594	$961	$560
		Earnings	$67,574	$67,489	$68,966	$63,091
		Default Rate	3	2	3	5
05-MASTERS DEGREE	Pass	Annual Loan Payment	$1,890			$1,890
		Earnings	$58,842			$58,842
		Default Rate	6			6
	Zone	Annual Loan Payment	$3,761			$3,761
		Earnings	$32,113			$32,113
		Default Rate	5			5
	Fail	Annual Loan Payment	$5,250			$5,250
		Earnings	$25,112			$25,112
		Default Rate	4			4
	All	Annual Loan Payment	$1,923			$1,923
		Earnings	$58,492			$58,492
		Default Rate	6			6
06-DOCTORAL DEGREE	Pass	Annual Loan Payment	$3,347			$3,347
		Earnings	$80,749			$80,749
		Default Rate	6			6
	Zone	Annual Loan Payment	$6,280			$6,280
		Earnings	$40,785			$40,785

		Default Rate	1			1
	All	Annual Loan Payment	$3,470			$3,470
		Earnings	$79,071			$79,071
		Default Rate	6			6
07-FIRST PROFESSIONAL DEGREE	Pass	Annual Loan Payment	$1,327			$1,327
		Earnings	$64,481			$64,481
		Default Rate	7			7
	Zone	Annual Loan Payment	$6,717			$6,717
		Earnings	$47,700			$47,700
		Default Rate	1			1
	Fail	Annual Loan Payment	$13,119			$13,119
		Earnings	$53,915			$53,915
		Default Rate	3			3
	All	Annual Loan Payment	$6,445			$6,445
		Earnings	$54,534			$54,534
		Default Rate	3			3

Table 11 shows the results of programs under the D/E rates measure in the 2012 GE informational rates sample.

Table 11: 2012 GE Informational Rates Program Results - D/E rates measure

Sector	IHE Type	Credential Level	Programs	Passing Programs	Zone Programs	Failing Programs	Enrollment	Enrollment in Passing Programs	Enrollment in Zone Programs	Enrollment in Failing Programs
Public	Total		1,093	1,090	2	1	142,400	142,077	277	46
	< 2 year	Certificate	157	157	0	0	11,439	11,439	0	0
	2-3 year	Certificate	824	823	1	0	119,615	119,559	56	0
	4-year	Certificate	86	84	1	1	8,102	7,835	221	46
		Post-Bacc Certificate	26	26	0	0	3,244	3,244	0	0
Private	Total		253	245	5	3	45,696	42,643	1,938	1,115
	< 2 year	Certificate	49	48	1	0	9,609	9,213	396	0
	2-3 year	Certificate	73	70	3	0	10,307	8,875	1,432	0
		Post-Bacc Certificate	1	1	0	0	17	17	0	0
	4-year	Certificate	91	88	1	2	20,666	19,561	110	995
		Post-Bacc Certificate	39	38	0	1	5,097	4,977	0	120
For-Profit	Total		4,193	2,921	825	447	2,333,187	1,530,701	444,504	357,982
	< 2 year	Certificate	1,100	919	153	28	216,363	166,144	44,072	6,147
		Associate's	5	4	1	0	195	195	0	0
		1st Professional Degree	4	4	0	0	312	312	0	0

2-3 year	Certificate	1,223	969	217	37	365,500	287,014	70,341	8,145	
	Associate's	452	236	153	63	105,750	46,826	32,604	26,320	
	Post-Bacc Certificate	2	2	0	0	156	156	0	0	
4-year	Certificate	267	180	68	19	84,610	49,881	29,977	4,752	
	Associate's	514	206	164	144	669,030	246,138	186,299	236,593	
	Bachelor's	407	203	61	143	618,330	469,780	76,333	72,217	
	Post-Bacc Certificate	8	8	0	0	1,950	1,950	0	0	
	Master's	171	158	3	10	226,106	222,444	1,240	2,422	
	Doctoral	30	28	2	0	37,676	36,754	922	0	
	1st Professional Degree	10	4	3	3	7,209	3,107	2,716	1,386	
Overall Total		5,539	4,256	832	451	2,521,283	1,715,421	446,719	359,143	

Table 12 disaggregate results under the D/E rates measure for the two debt-to-earnings rates, the annual earnings rate and the dicretionary income rate.

Table 12: 2012 GE Informational Rates Program Results - D/E rates measure, disaggregated by annual earnings rate and discretionary income rate

Sector	IHE Type	Credential Level	Total	Pass D/E	Pass ADTE & DDTE	Pass ADTE & Zone DDTE	Pass DDTE & Zone ADTE	Pass ADTE & Fail DDTE	Pass DDTE & Fail ADTE	Zone D/E	Zone ADTE & DDTE	zone ADTE & fail DDTE	Zone DDTE & Fail ADTE	Fail (both ADTE & DDTE)
Public	Total		1,093	1,090	1,050	2	0	38	0	2	0	2	0	1
	< 2 year	Certificate	157	157	148	1	0	8	0	0	0	0	0	0
	2-3 year	Certificate	824	823	794	1	0	28	0	1	0	1	0	0
	4-year	Certificate	86	84	82	0	0	2	0	1	0	1	0	1
		Post-Bacc Certificate	26	26	26	0	0	0	0	0	0	0	0	0
Private	Total		253	245	178	7	1	59	0	5	1	4	0	3
	< 2 year	Certificate	49	48	29	0	0	19	0	1	1	0	0	0
	2-3 year	Certificate	73	70	50	1	0	19	0	3	0	3	0	0
		Post-Bacc Certificate	1	1	0	1	0	0	0	0	0	0	0	0
	4-year	Certificate	91	88	61	5	1	21	0	1	0	1	0	2
		Post-Bacc Certificate	39	38	38	0	0	0	0	0	0	0	0	1
For-Profit	Total		4193	2,921	1,191	180	71	1,479	0	825	92	712	21	447
	< 2 year	Certificate	1100	919	252	40	0	627	0	153	1	152	0	28
		Associate's	5	4	0	0	0	4	0	1	0	1	0	0
		1st Professional Degree	4	4	1	0	0	3	0	0	0	0	0	0
	2-3	Certificate	1223	969	271	63	16	619	0	217	8	209	0	37

	year	Associate's	452	236	135	16	9	76	0	153	15	136	2	63
		Post-Bacc Certificate	2	2	2	0	0	0	0	0	0	0	0	0
	4-year	Certificate	267	180	52	18	0	110	0	68	2	66	0	19
		Associate's	514	206	116	38	13	39	0	164	31	128	5	144
		Bachelor's	407	203	174	4	24	1	0	61	33	20	8	143
		Post-Bacc Certificate	8	8	8	0	0	0	0	0	0	0	0	0
		Master's	171	158	152	1	5	0	0	3	2	0	1	10
		Doctoral	30	28	26	0	2	0	0	2	0	0	2	0
		1st Professional Degree	10	4	2	0	2	0	0	3	0	0	3	3
Overall Total			5,539	4,256	2,419	189	72	1,576	0	832	93	718	21	451

Table 13 shows the results of programs under the pCDR measure in the 2012 GE informational rates sample.

Table 13: 2012 GE informational Rates Program Results - pCDR measure

Sector	IHE Type	Credential Level	Programs	Passing Programs	Failing Programs	Enrollment	Enrollment in Passing Programs	Enrollment in Failing Programs
Public	Total		902	850	52	121,650	108,995	12,655
	< 2 year	Certificate	119	115	4	9,489	9,293	196
	2-3 year	Certificate	701	655	46	104,399	92,090	12,309
	4-year	Certificate	60	58	2	5,055	4,905	150
		Post-Bacc Certificate	22	22	0	2,707	2,707	0
Private	Total		262	236	26	40,039	36,317	3,722
	< 2 year	Certificate	33	25	8	5,655	4,427	1,228
	2-3 year	Certificate	66	63	3	8,877	8,603	274
		Post-Bacc Certificate	1	1	0	17	17	0
	4-year	Certificate	94	79	15	19,263	17,043	2,220
		Post-Bacc Certificate	68	68	0	6,227	6,227	0
For-Profit	Total		5,651	4,786	865	2,583,388	1,921,468	661,920
	< 2 year	Certificate	1,027	869	158	196,484	157,098	39,386
		Associate's	4	3	1	87	34	53
		1st Professional Degree	3	2	1	262	262	0

2-3 year	Associate's	832	700	132	135,988	109,139	26,849	79,344
	Post-Bacc Certificate	2	2	0	156	156	0	0
4-year	Certificate	398	337	61	90,875	83,496	7,379	7,379
	Associate's	958	746	212	774,875	302,358	472,517	472,517
	Bachelor's	721	679	42	737,414	701,022	36,392	36,392
	Post-Bacc Certificate	26	26	0	3,960	3,960	0	0
	Master's	218	218	0	235,113	235,113	0	0
	Doctoral	67	67	0	51,931	51,931	0	0
	1st Professional Degree	9	9	0	6,874	6,874	0	0
Overall Total		6,815	5,872	943	2,745,077	2,066,780	678,297	595,652

Table 14 provides program and FY 2010 title IV enrollment counts for the 20 most frequent CIP-credential level combinations in the 2012 GE informational rates. In addition, Table 14 provides the percentage of programs and enrollment that each CIP-credential level combination represents of all programs in the 2012 GE informational rates sample.

Table 14: 20 Most Common Types of Programs in 2012 GE Informational Rates Sample (Program Count)

* combines CIP codes 513901 and 511613[158]

CIP Name	Cred	All sectors				Public		Private		For-profit	
		Programs	% of all programs	t4 students	% of all t4 students	% of programs in CIP-cred	% t4 students in CIP-cred	% of programs in CIP-cred	% t4 students in CIP-cred	% of programs in CIP-cred	% t4 students in CIP-cred
COSMETOLOGY/COSMETOLOGIST, GENERAL.	Certificate	667	8.4%	120,803	4.1%	12.1%	7.1%	0.9%	0.6%	87.0%	92.3%
LICENSED PRACTICAL/VOCATIONAL NURSE TRAINING*	Certificate	571	7.2%	86,950	3.0%	80.9%	62.3%	4.4%	4.1%	14.7%	33.6%
MEDICAL/CLINICAL ASSISTANT.	Certificate	407	5.1%	185,471	6.4%	15.2%	5.4%	3.4%	3.7%	81.3%	90.8%
MASSAGE THERAPY/THERAPEUTIC MASSAGE.	Certificate	271	3.4%	35,045	1.2%	4.1%	1.2%	2.6%	2.1%	93.4%	96.7%
PHARMACY TECHNICIAN/ASSISTANT.	Certificate	153	1.9%	27,311	0.9%	7.2%	4.9%	7.2%	10.6%	85.6%	84.5%
MEDICAL/CLINICAL ASSISTANT.	Associate's	151	1.9%	74,506	2.6%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
DENTAL ASSISTING/ASSISTANT.	Certificate	145	1.8%	21,757	0.7%	25.5%	10.7%	1.4%	0.9%	73.1%	88.5%
AESTHETICIAN/ESTHETICIAN AND SKIN CARE SPECIALIST.	Certificate	136	1.7%	7,372	0.3%	1.5%	1.0%	0.0%	0.0%	98.5%	99.0%
MEDICAL INSURANCE CODING SPECIALIST/CODER.	Certificate	112	1.4%	21,224	0.7%	12.5%	5.4%	6.3%	7.9%	81.3%	86.7%
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Associate's	92	1.2%	74,095	2.5%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
MEDICAL ADMINISTRATIVE/EXECUTIVE ASSISTANT AND MEDICAL SECRETARY.	Certificate	88	1.1%	16,027	0.5%	14.8%	8.5%	3.4%	2.9%	81.8%	88.6%
MEDICAL INSURANCE SPECIALIST/MEDICAL BILLER.	Certificate	87	1.1%	20,381	0.7%	1.1%	0.9%	6.9%	6.0%	92.0%	93.2%
LEGAL ASSISTANT/PARALEGAL.	Associate's	79	1.0%	19,962	0.7%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%

SURGICAL TECHNOLOGY/TECHNOLOGIST.	Certificate	77	1.0%	8,335	0.3%	27.3%	16.2%	5.2%	5.1%	67.5%	78.7%
MEDICAL OFFICE ASSISTANT/SPECIALIST.	Certificate	73	0.9%	10,538	0.4%	8.2%	5.0%	1.4%	1.8%	90.4%	93.2%
AUTOMOBILE/AUTOMOTIVE MECHANICS TECHNOLOGY/TECHNICIAN.	Certificate	71	0.9%	35,071	1.2%	39.4%	7.1%	8.5%	4.2%	52.1%	88.7%
CRIMINAL JUSTICE/POLICE SCIENCE.	Certificate	68	0.9%	10,755	0.4%	98.5%	99.6%	0.0%	0.0%	1.5%	0.4%
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Bachelor's	66	0.8%	174,487	6.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
HEATING, AIR CONDITIONING, VENTILATION AND REFRIGERATION MAINTENANCE TECHNOLOGY/TECHNICIAN (HAC, HACR, HVAC, HVACR).	Certificate	66	0.8%	13,484	0.5%	30.3%	9.2%	6.1%	3.8%	63.6%	86.9%
BARBERING/BARBER.	Certificate	65	0.8%	10,378	0.4%	6.2%	5.0%	1.5%	3.8%	92.3%	91.2%

Table 15 provides the weighted averages of the median annual loan payment, higher of the mean or median annual earnings and pCDR for the 20 most frequent CIP-credential-level

[158] CIP codes 513901 and 511613 were combined to conform with changes to CIP code 51163 in 2010. See http://nces.ed.gov/ipeds/cipcode/cipdetail.aspx?y=55&cip=51.3901.

combinations in the 2012 informational rates.

Table 15: Average Annual Loan Payment, Earnings, and pCDR for 20 Most Common Types of Programs in 2012 GE Informational Rates Sample (Program Count)[159]

* combines CIP codes 513901 and 511613

CIP Name	Cred	All sectors			Public			Private			For-profit		
		Annual loan payment	Earnings	Default rate	Annual loan payment	Earnings	Default rate	Annual loan payment	Earnings	Default rate	Annual loan payment	Earnings	Default rate
COSMETOLOGY/COSMETOLOGIST, GENERAL.	Certificate	$804	$12,276	17.4%	$137	$12,796	20.0%	$358	$12,281	17.8%	$845	$12,246	17.3%
LICENSED PRACTICAL/VOCATIONAL NURSE TRAINING*	Certificate	$922	$33,835	12.9%	$490	$34,939	11.3%	$990	$28,110	15.5%	$1,753	$32,365	14.7%
MEDICAL/CLINICAL ASSISTANT.	Certificate	$1,009	$15,344	24.6%	$271	$20,370	13.4%	$928	$14,400	15.1%	$1,029	$15,277	25.2%
MASSAGE THERAPY/THERAPEUTIC MASSAGE.	Certificate	$939	$16,122	21.3%	$307	$18,750	11.7%	$959	$18,879	15.4%	$944	$16,060	21.5%
PHARMACY TECHNICIAN/ASSISTANT.	Certificate	$922	$17,073	21.3%	$357	$23,052	14.1%	$832	$15,058	17.6%	$945	$17,123	21.9%
MEDICAL/CLINICAL ASSISTANT.	Associate's	$1,827	$19,234	22.5%							$1,827	$19,234	22.5%
DENTAL ASSISTING/ASSISTANT.	Certificate	$911	$17,211	19.8%	$418	$23,173	9.2%	$1,081	$16,332	10.7%	$952	$16,705	21.3%
AESTHETICIAN/ESTHETICIAN AND SKIN CARE SPECIALIST.	Certificate	$606	$16,539	10.9%	$208	$19,233	4.7%				$610	$16,511	11.0%
MEDICAL INSURANCE CODING SPECIALIST/CODER.	Certificate	$1,050	$17,080	20.1%	$249	$25,452	11.2%	$1,119	$16,645	9.9%	$1,073	$16,807	21.8%
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Associate's	$1,700	$27,025	27.5%							$1,700	$27,025	27.5%

[159] Averages include earnings and loan payment data from programs with D/E rates measure n-size less than 30 (if available) in instances where no programs met minimum n-size 30.

MEDICAL ADMINISTRATIVE/EXECUTIVE ASSISTANT AND MEDICAL SECRETARY.	Certificate	$878	$12,693	24.7%	$323	$18,941	14.4%	$140	$8,600	32.4%	$916	$12,669	25.4%
MEDICAL INSURANCE SPECIALIST/MEDICAL BILLER.	Certificate	$1,020	$17,784	19.4%	$0	$16,300		$386	$8,876	24.3%	$1,054	$18,181	19.3%
LEGAL ASSISTANT/PARALEGAL.	Associate's	$2,283	$22,796	23.2%							$2,283	$22,796	23.2%
SURGICAL TECHNOLOGY/TECHNOLOGIST.	Certificate	$1,235	$24,218	17.4%	$417	$29,797	11.3%	$760	$23,533	13.1%	$1,354	$23,583	18.5%
MEDICAL OFFICE ASSISTANT/SPECIALIST.	Certificate	$926	$13,736	24.1%	$112	$14,973	18.6%	$628	$14,010	27.1%	$953	$13,698	24.2%
AUTOMOBILE/AUTOMOTIVE MECHANICS TECHNOLOGY/TECHNICIAN.	Certificate	$1,235	$23,660	21.6%	$503	$25,824	19.9%	$698	$20,208	23.6%	$1,275	$23,671	21.7%
CRIMINAL JUSTICE/POLICE SCIENCE.	Certificate	$95	$42,174	12.7%	$95	$42,557	12.7%				$27	$5,627	
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Bachelor's	$1,057	$21,608	27.7%	$410	$24,889	14.4%	$713	$23,702	20.7%	$1,143	$21,146	29.3%
HEATING, AIR CONDITIONING, VENTILATION AND REFRIGERATION MAINTENANCE TECHNOLOGY/TECHNICIAN (HAC, HACR, HVAC, HVACR).	Certificate	$2,489	$49,821	19.6%							$2,489	$49,821	19.6%
BARBERING/BARBER.	Certificate	$335	$7,722	31.5%	$355	$7,413	42.7%	$0	$7,128		$343	$7,742	30.9%

Table 16 provides the 20 CIP-credential level combinations with the highest FY 2010 title IV enrollment in the 2012 GE informational rates sample. In addition, Table 16 provides the percentage of programs and enrollment

Table 16: 20 Most Common Types of Programs in the 2012 GE Informational Rates Sample (Title IV Enrollment)

* combines CIP codes 513901 and 511613

CIP Name	Cred	All sectors				Public		Private		For-profit	
		Programs	% of all programs	t4 students	% of all t4 students	% of programs in CIP-cred	% t4 students in CIP-cred	% of programs in CIP-cred	% t4 students in CIP-cred	% of programs in CIP-cred	% t4 students in CIP-cred
MEDICAL/CLINICAL ASSISTANT.	Certificate	407	5.1%	185,471	6.4%	15.2%	5.4%	3.4%	3.7%	81.3%	90.8%
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Bachelor's	66	0.8%	174,487	6.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
COSMETOLOGY/COSMETOLOGIST, GENERAL.	Certificate	667	8.4%	120,803	4.1%	12.1%	7.1%	0.9%	0.6%	87.0%	92.3%
LICENSED PRACTICAL/VOCATIONAL NURSE TRAINING*	Certificate	571	7.2%	86,950	3.0%	80.9%	62.3%	4.4%	4.1%	14.7%	33.6%
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Master's	29	0.4%	77,744	2.7%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
MEDICAL/CLINICAL ASSISTANT.	Associate's	151	1.9%	74,506	2.6%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Associate's	92	1.2%	74,095	2.5%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
OFFICE MANAGEMENT AND SUPERVISION.	Associate's	7	0.1%	59,274	2.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
CRIMINAL JUSTICE/LAW ENFORCEMENT ADMINISTRATION.	Bachelor's	18	0.2%	38,622	1.3%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
MEDICAL OFFICE ASSISTANT/SPECIALIST.	Associate's	19	0.2%	35,484	1.2%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
AUTOMOBILE/AUTOMOTIVE MECHANICS TECHNOLOGY/TECHNICIAN.	Certificate	71	0.9%	35,071	1.2%	39.4%	7.1%	8.5%	4.2%	52.1%	88.7%
MASSAGE THERAPY/THERAPEUTIC MASSAGE.	Certificate	271	3.4%	35,045	1.2%	4.1%	1.2%	2.6%	2.1%	93.4%	96.7%
COMPUTER SYSTEMS NETWORKING AND TELECOMMUNICATIONS.	Associate's	36	0.5%	33,465	1.1%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%

that each CIP-credential level combination represents out of all programs and enrollment and out of each CIP-credential level combination in the 2012 GE informational rates sample.

HEALTH INFORMATION/MEDICAL RECORDS TECHNOLOGY/TECHNICIAN.	Associate's	18	0.2%	32,535	1.1%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
CORRECTIONS AND CRIMINAL JUSTICE, OTHER.	Associate's	4	0.1%	28,498	1.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
PHARMACY TECHNICIAN/ASSISTANT.	Certificate	153	1.9%	27,311	0.9%	7.2%	4.9%	7.2%	10.6%	85.6%	84.5%
BEHAVIORAL SCIENCES.	Associate's	1	0.0%	27,090	0.9%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
CRIMINAL JUSTICE/SAFETY STUDIES.	Bachelor's	19	0.2%	26,968	0.9%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
CRIMINAL JUSTICE/LAW ENFORCEMENT ADMINISTRATION.	Associate's	25	0.3%	26,768	0.9%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
PSYCHOLOGY, GENERAL.	Bachelor's	8	0.1%	26,580	0.9%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%

Table 17 provides the weighted averages of the median annual loan payment, higher of the mean or median annual earnings, and pCDR for the CIP-credential level combinations in the 2012 GE informational rates sample

with the highest FY 2010 title IV enrollment.

Table 17: Average Annual Loan Payment, Earnings, and pCDR for 20 Most Common Types of Programs in the 2012 GE Informational Rates Sample (Title IV Enrollment)[160]

* combines CIP codes 513901 and 511613

CIP Name	Cred	All sectors			Public			Private			For-profit		
		Annual loan payment	Earnings	Default rate	Annual loan payment	Earnings	Default rate	Annual loan payment	Earnings	Default rate	Annual loan payment	Earnings	Default rate
MEDICAL/CLINICAL ASSISTANT.	Certificate	$1,009	$15,344	24.6%	$271	$20,370	13.4%	$928	$14,400	15.1%	$1,029	$15,277	25.2%
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Bachelor's	$2,489	$49,821	19.6%							$2,489	$49,821	19.6%
COSMETOLOGY/COSMETOLOGIST, GENERAL.	Certificate	$804	$12,276	17.4%	$137	$12,796	20.0%	$358	$12,281	17.8%	$845	$12,246	17.3%
LICENSED PRACTICAL/VOCATIONAL NURSE TRAINING*	Certificate	$922	$33,835	12.9%	$490	$34,939	11.3%	$990	$28,110	15.5%	$1,753	$32,365	14.7%
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Master's	$1,997	$63,823	7.0%							$1,997	$63,823	7.0%
MEDICAL/CLINICAL ASSISTANT.	Associate's	$1,827	$19,234	22.5%							$1,827	$19,234	22.5%
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Associate's	$1,700	$27,025	27.5%							$1,700	$27,025	27.5%
OFFICE MANAGEMENT AND SUPERVISION.	Associate's	$1,910	$38,413	33.7%							$1,910	$38,413	33.7%
CRIMINAL JUSTICE/LAW ENFORCEMENT ADMINISTRATION.	Bachelor's	$3,095	$38,362	25.1%							$3,095	$38,362	25.1%
MEDICAL OFFICE ASSISTANT/SPECIALIST.	Associate's	$1,954	$22,065	34.2%							$1,954	$22,065	34.2%
AUTOMOBILE/AUTOMOTIVE MECHANICS	Certificate	$1,235	$23,660	21.6%	$503	$25,824	19.9%	$698	$20,208	23.6%	$1,275	$23,671	21.7%

[160] Averages include earnings and loan payment data from programs with D/E rates measure n-size less than 30 (if available) in instances where no programs met minimum n-size 30.

Table 18 shows the 20 most frequent for-profit sector in the 2012 GE CIP-credential level combinations in the informational rates sample.

TECHNOLOGY/TECHNICIAN.													
MASSAGE THERAPY/THERAPEUTIC MASSAGE.	Certificate	$939	$16,122	21.3%	$307	$18,750	11.7%	$959	$18,879	15.4%	$944	$16,060	21.5%
COMPUTER SYSTEMS NETWORKING AND TELECOMMUNICATIONS.	Associate's	$3,772	$28,759	30.8%							$3,772	$28,759	30.8%
HEALTH INFORMATION/MEDICAL RECORDS TECHNOLOGY/TECHNICIAN.	Associate's	$2,412	$24,471	33.6%							$2,412	$24,471	33.6%
CORRECTIONS AND CRIMINAL JUSTICE, OTHER.	Associate's	$2,077	$30,857	43.9%							$2,077	$30,857	43.9%
PHARMACY TECHNICIAN/ASSISTANT.	Certificate	$922	$17,073	21.3%	$357	$23,052	14.1%	$832	$15,058	17.6%	$945	$17,123	21.9%
BEHAVIORAL SCIENCES.	Associate's	$2,335	$18,781	38.0%							$2,335	$18,781	38.0%
CRIMINAL JUSTICE/SAFETY STUDIES.	Bachelor's	$2,879	$33,470	25.4%							$2,879	$33,470	25.4%
CRIMINAL JUSTICE/LAW ENFORCEMENT ADMINISTRATION.	Associate's	$2,640	$20,653	32.2%							$2,640	$20,653	32.2%
PSYCHOLOGY, GENERAL.	Bachelor's	$1,497	$29,013	21.3%							$1,497	$29,013	21.3%

Table 18: 20 Most Common Types of For-Profit Programs in the 2012 GE Informational Rates Sample (Program Count)[161]

* combines CIP codes 513901 and 511613

CIP Name	Cred	Programs	% Of All Programs	t4 students	% Of All T4 Students	% All Programs in CIP-Cred	% of all T4 Students in CIP Cred	Avg Annual loan payment	For-Profit Avg Earnings	Avg Default Rate
COSMETOLOGY/COSMETOLOGIST, GENERAL.	Certificate	580	7.3%	111,456	3.8%	87.0%	92.3%	845	12,246	17
MEDICAL/CLINICAL ASSISTANT.	Certificate	331	4.2%	168,460	5.8%	81.3%	90.8%	1,029	15,277	25
MASSAGE THERAPY/THERAPEUTIC MASSAGE.	Certificate	253	3.2%	33,871	1.2%	93.4%	96.7%	944	16,060	21
MEDICAL/CLINICAL ASSISTANT.	Associate's	151	1.9%	74,506	2.6%	100.0%	100.0%	1,827	19,234	22
AESTHETICIAN/ESTHETICIAN AND SKIN CARE SPECIALIST.	Certificate	134	1.7%	7,295	0.3%	98.5%	99.0%	610	16,511	11
PHARMACY TECHNICIAN/ASSISTANT.	Certificate	131	1.7%	23,074	0.8%	85.6%	84.5%	945	17,123	22
DENTAL ASSISTING/ASSISTANT.	Certificate	106	1.3%	19,245	0.7%	73.1%	88.5%	952	16,705	21
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Associate's	92	1.2%	74,095	2.5%	100.0%	100.0%	1,700	27,025	28
MEDICAL INSURANCE CODING SPECIALIST/CODER.	Certificate	91	1.1%	18,402	0.6%	81.3%	86.7%	1,073	16,807	22
LICENSED PRACTICAL/VOCATIONAL NURSE TRAINING*	Certificate	84	1.1%	29,231	1.0%	14.7%	33.6%	1,753	32,365	15
MEDICAL INSURANCE SPECIALIST/MEDICAL BILLER.	Certificate	80	1.0%	18,985	0.7%	92.0%	93.2%	1,054	18,181	19
LEGAL ASSISTANT/PARALEGAL.	Associate's	79	1.0%	19,962	0.7%	100.0%	100.0%	2,283	22,796	23

[161] Averages include earnings and loan payment data from programs with D/E rates measure n-size less than 30 (if available) in instances where no programs met minimum n-size 30.

MEDICAL ADMINISTRATIVE/EXECUTIVE ASSISTANT AND MEDICAL SECRETARY.	Certificate	72	0.9%	14,196	0.5%	81.8%	88.6%	916	12,669	25
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Bachelor's	66	0.8%	174,487	6.0%	100.0%	100.0%	2,489	49,821	20
MEDICAL OFFICE ASSISTANT/SPECIALIST.	Certificate	66	0.8%	9,818	0.3%	90.4%	93.2%	953	13,698	24
BARBERING/BARBER.	Certificate	60	0.8%	9,469	0.3%	92.3%	91.2%	343	7,742	31
GRAPHIC DESIGN.	Associate's	54	0.7%	13,280	0.5%	100.0%	100.0%	2,390	20,506	25
SURGICAL TECHNOLOGY/TECHNOLOGIST.	Certificate	52	0.7%	6,560	0.2%	67.5%	78.7%	1,354	23,583	19
CRIMINAL JUSTICE/SAFETY STUDIES.	Associate's	47	0.6%	24,507	0.8%	100.0%	100.0%	1,921	22,333	29
ACCOUNTING TECHNOLOGY/TECHNICIAN AND BOOKKEEPING.	Associate's	44	0.6%	26,550	0.9%	100.0%	100.0%	2,010	27,335	27

Table 19 shows the 20 CIP-credential level combinations with the highest title IV enrollment in the for-profit sector in the 2012 GE informational rates sample.

Table 19: 20 Most Common Types of For-Profit Programs in the 2012 GE Informational Rates Sample (Title IV Enrollment)[162]

* combines CIP codes 513901 and 511613

CIP Name	Cred	Programs	% Of All Programs	t4 students	% Of All T4 Students	% of all Programs in CIP-Cred	% of all T4 Students in CIP Cred	Avg Annual loan payment	Avg Earnings	Avg Default Rate
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Bachelor's	66	0.8%	174,487	6.0%	100.0%	100.0%	2,489	49,821	20
MEDICAL/CLINICAL ASSISTANT.	Certificate	331	4.2%	168,460	5.8%	81.3%	90.8%	1,029	15,277	25
COSMETOLOGY/COSMETOLOGIST, GENERAL.	Certificate	580	7.3%	111,456	3.8%	87.0%	92.3%	845	12,246	17
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Master's	29	0.4%	77,744	2.7%	100.0%	100.0%	1,997	63,823	7
MEDICAL/CLINICAL ASSISTANT.	Associate's	151	1.9%	74,506	2.6%	100.0%	100.0%	1,827	19,234	22
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Associate's	92	1.2%	74,095	2.5%	100.0%	100.0%	1,700	27,025	28
OFFICE MANAGEMENT AND SUPERVISION.	Associate's	7	0.1%	59,274	2.0%	100.0%	100.0%	1,910	38,413	34
CRIMINAL JUSTICE/LAW ENFORCEMENT ADMINISTRATION.	Bachelor's	18	0.2%	38,622	1.3%	100.0%	100.0%	3,095	38,362	25
MEDICAL OFFICE ASSISTANT/SPECIALIST.	Associate's	19	0.2%	35,484	1.2%	100.0%	100.0%	1,954	22,065	34
MASSAGE THERAPY/THERAPEUTIC MASSAGE.	Certificate	253	3.2%	33,871	1.2%	93.4%	96.7%	944	16,060	21
COMPUTER SYSTEMS NETWORKING AND TELECOMMUNICATIONS.	Associate's	36	0.5%	33,465	1.1%	100.0%	100.0%	3,772	28,759	31
HEALTH INFORMATION/MEDICAL RECORDS TECHNOLOGY/TECHNICIAN.	Associate's	18	0.2%	32,535	1.1%	100.0%	100.0%	2,412	24,471	34

[162] Averages include earnings and loan payment data from programs with D/E rates measure n-size less than 30 (if available) in instances where no programs met minimum n-size 30.

Table 20 shows the 20 most frequent CIP-credential level combinations in the public sector in the 2012 GE informational rates sample.

AUTOMOBILE/AUTOMOTIVE MECHANICS TECHNOLOGY/TECHNICIAN.	Certificate	37	0.5%	31,111	1.1%	52.1%	88.7%	1,275	23,671	22
LICENSED PRACTICAL/VOCATIONAL NURSE TRAINING*	Certificate	84	1.1%	29,231	1.0%	14.7%	33.6%	1,753	32,365	15
CORRECTIONS AND CRIMINAL JUSTICE, OTHER.	Associate's	4	0.1%	28,498	1.0%	100.0%	100.0%	2,077	30,857	44
BEHAVIORAL SCIENCES.	Associate's	1	0.0%	27,090	0.9%	100.0%	100.0%	2,335	18,781	38
CRIMINAL JUSTICE/SAFETY STUDIES.	Bachelor's	19	0.2%	26,968	0.9%	100.0%	100.0%	2,879	33,470	25
CRIMINAL JUSTICE/LAW ENFORCEMENT ADMINISTRATION.	Associate's	25	0.3%	26,768	0.9%	100.0%	100.0%	2,640	20,653	32
PSYCHOLOGY, GENERAL.	Bachelor's	8	0.1%	26,580	0.9%	100.0%	100.0%	1,497	29,013	21
ACCOUNTING TECHNOLOGY/TECHNICIAN AND BOOKKEEPING.	Associate's	44	0.6%	26,550	0.9%	100.0%	100.0%	2,010	27,335	27

Table 20: 20 Most Common Types of Public Sector Programs in the 2012 GE Informational Rates Sample (Program Count)[163]

* combines CIP codes 513901 and 511613

CIP Name	Cred	Programs	% All Programs	t4 students	% Of All T4 Students	% of all Programs in CIP-Cred	% of all T4 Students in CIP Cred	Avg Annual loan payment	Avg Earnings	Default Rate
LICENSED PRACTICAL/VOCATIONAL NURSE TRAINING*	Certificate	462	5.8%	54,174	1.9%	80.9%	62.3%	490	34,939	11
COSMETOLOGY/COSMETOLOGIST, GENERAL.	Certificate	81	1.0%	8,615	0.3%	12.1%	7.1%	137	12,796	20
CRIMINAL JUSTICE/POLICE SCIENCE.	Certificate	67	0.8%	10,708	0.4%	98.5%	99.6%	95	42,557	13
MEDICAL/CLINICAL ASSISTANT.	Certificate	62	0.8%	10,059	0.3%	15.2%	5.4%	271	20,370	13
DENTAL ASSISTING/ASSISTANT.	Certificate	37	0.5%	2,322	0.1%	25.5%	10.7%	418	23,173	9
EMERGENCY MEDICAL TECHNOLOGY/TECHNICIAN (EMT PARAMEDIC).	Certificate	34	0.4%	2,474	0.1%	69.4%	40.7%	74	42,218	8
WELDING TECHNOLOGY/WELDER.	Certificate	33	0.4%	2,553	0.1%	63.5%	32.2%	336	24,631	22
AUTOMOBILE/AUTOMOTIVE MECHANICS TECHNOLOGY/TECHNICIAN.	Certificate	28	0.4%	2,496	0.1%	39.4%	7.1%	503	25,824	20
TRUCK AND BUS DRIVER/COMMERCIAL VEHICLE OPERATION.	Certificate	26	0.3%	1,301	0.0%	63.4%	15.7%	183	25,615	22
SURGICAL TECHNOLOGY/TECHNOLOGIST.	Certificate	21	0.3%	1,354	0.0%	27.3%	16.2%	417	29,797	11
ELECTRICIAN.	Certificate	20	0.3%	1,337	0.0%	31.3%	11.8%	713	31,729	10
HEATING, AIR CONDITIONING, VENTILATION AND REFRIGERATION MAINTENANCE TECHNOLOGY/TECHNICIAN (HAC, HACR, HVAC, HVACR).	Certificate	20	0.3%	1,245	0.0%	30.3%	9.2%	410	24,889	14

[163] Averages include earnings and loan payment data from programs with D/E rates measure n-size less than 30 (if available) in instances where no programs met minimum n-size 30.

Table 21 shows the 20 CIP-credential level combinations with the highest title IV enrollment in the public sector in the 2012 GE informational rates sample.

ADMINISTRATIVE ASSISTANT AND SECRETARIAL SCIENCE, GENERAL.	Certificate	19	0.2%	3,762	0.1%	33.3%	64.0%	107	15,103	18
CARPENTRY/CARPENTER.	Certificate	15	0.2%	928	0.0%	88.2%	73.9%	543	26,238	18
AUTOBODY/COLLISION AND REPAIR TECHNOLOGY/TECHNICIAN.	Certificate	14	0.2%	810	0.0%	53.8%	12.5%	764	26,412	21
BUSINESS OPERATIONS SUPPORT AND SECRETARIAL SERVICES, OTHER.	Certificate	14	0.2%	1,120	0.0%	70.0%	84.9%	0	12,489	
MEDICAL INSURANCE CODING SPECIALIST/CODER.	Certificate	14	0.2%	1,148	0.0%	12.5%	5.4%	249	25,452	11
MENTAL AND SOCIAL HEALTH SERVICES AND ALLIED PROFESSIONS, OTHER.	Certificate	14	0.2%	1,769	0.1%	100.0%	100.0%	0	24,684	14
NURSING ASSISTANT/AIDE AND PATIENT CARE ASSISTANT/AIDE.	Certificate	14	0.2%	3,109	0.1%	66.7%	58.4%	10	16,341	12
CHILD CARE PROVIDER/ASSISTANT.	Certificate	13	0.2%	6,574	0.2%	65.0%	90.8%	11	16,672	17
LINEWORKER.	Certificate	13	0.2%	562	0.0%	100.0%	100.0%	534	43,854	6
MEDICAL ADMINISTRATIVE/EXECUTIVE ASSISTANT AND MEDICAL SECRETARY.	Certificate	13	0.2%	1,363	0.0%	14.8%	8.5%	323	18,941	14
REGISTERED NURSING/REGISTERED NURSE.	Certificate	13	0.2%	12,666	0.4%	34.2%	75.6%	227	62,579	14

Table 21: 20 Most Common Types of Public Sector Programs in the 2012 GE Informational Rates Sample (Title IV Enrollment)

* combines CIP codes 513901 and 511613

CIP Name	Cred	Programs	% All Programs	t4 students	% Of All T4 Students	% of all Programs in CIP-Cred	% of all T4 Students in CIP Cred	Avg Annual loan payment	Avg Earnings	Default Rate
LICENSED PRACTICAL/VOCATIONAL NURSE TRAINING*	Certificate	462	5.8%	54,174	1.9%	80.9%	62.3%	490	34,939	11
REGISTERED NURSING/REGISTERED NURSE.	Certificate	13	0.2%	12,666	0.4%	34.2%	75.6%	227	62,579	14
CRIMINAL JUSTICE/POLICE SCIENCE.	Certificate	67	0.8%	10,708	0.4%	98.5%	99.6%	95	42,557	13
MEDICAL/CLINICAL ASSISTANT.	Certificate	62	0.8%	10,059	0.3%	15.2%	5.4%	271	20,370	13
LIBERAL ARTS AND SCIENCES/LIBERAL STUDIES.	Certificate	10	0.1%	8,640	0.3%	100.0%	100.0%	0	15,635	21
COSMETOLOGY/COSMETOLOGIST, GENERAL.	Certificate	81	1.0%	8,615	0.3%	12.1%	7.1%	137	12,796	20
CHILD CARE PROVIDER/ASSISTANT.	Certificate	13	0.2%	6,574	0.2%	65.0%	90.8%	11	16,672	17
ADMINISTRATIVE ASSISTANT AND SECRETARIAL SCIENCE, GENERAL.	Certificate	19	0.2%	3,762	0.1%	33.3%	64.0%	107	15,103	18
NURSING ASSISTANT/AIDE AND PATIENT CARE ASSISTANT/AIDE.	Certificate	14	0.2%	3,109	0.1%	66.7%	58.4%	10	16,341	12
HEALTH PROFESSIONS AND RELATED CLINICAL SCIENCES, OTHER.	Certificate	8	0.1%	3,009	0.1%	66.7%	76.3%	0	19,972	25
WELDING TECHNOLOGY/WELDER.	Certificate	33	0.4%	2,553	0.1%	63.5%	32.2%	336	24,631	22
AUTOMOBILE/AUTOMOTIVE MECHANICS TECHNOLOGY/TECHNICIAN.	Certificate	28	0.4%	2,496	0.1%	39.4%	7.1%	503	25,824	20
EMERGENCY MEDICAL TECHNOLOGY/TECHNICIAN (EMT PARAMEDIC).	Certificate	34	0.4%	2,474	0.1%	69.4%	40.7%	74	42,218	8
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Certificate	9	0.1%	2,436	0.1%	47.4%	84.4%	106	26,059	19
DENTAL ASSISTING/ASSISTANT.	Certificate	37	0.5%	2,322	0.1%	25.5%	10.7%	416	23,173	9
ALLIED HEALTH DIAGNOSTIC, INTERVENTION, AND TREATMENT PROFESSIONS, OTHER.	Certificate	7	0.1%	1,993	0.1%	87.5%	94.1%	0	25,168	16
HEALTH/MEDICAL PREPARATORY PROGRAMS, OTHER.	Certificate	2	0.0%	1,961	0.1%	100.0%	100.0%	0	25,643	11

MENTAL AND SOCIAL HEALTH SERVICES AND ALLIED PROFESSIONS, OTHER.	Certificate	14	0.2%	1,769	0.1%	100.0%	100.0%	0	24,684	14
LEGAL ASSISTANT/PARALEGAL.	Certificate	11	0.1%	1,630	0.1%	28.9%	46.1%	65	35,712	7
ACCOUNTING TECHNOLOGY/TECHNICIAN AND BOOKKEEPING.	Certificate	8	0.1%	1,429	0.0%	22.2%	43.1%	73	19,944	8

Table 22 provides the 2012 GE informational rate program and enrollment counts for the CIP-credential level combinations with the most programs that are failing or in the zone under the proposed GE measures.

Table 22: 20 Most Common Types of Zone or Failing Programs in the 2012 GE Informational Rates Sample (Program Count)

* combines CIP codes 513901 and 511613

CIP Name	Cred	All sectors				Public		Private		For-profit	
		Zone/Fail Programs	% Zone/Fail programs in CIP-cred	Zone/Fail t4 students	% Zone/Fail t4 students in CIP-cred	% Zone/Fail programs in CIP-cred	% Zone/Fail t4 students in CIP-cred	% Zone/Fail programs in CIP-cred	% Zone/Fail t4 students in CIP-cred	% Zone/Fail programs in CIP-cred	% Zone/Fail t4 students in CIP-cred
COSMETOLOGY/COSMETOLOGIST, GENERAL.	Certificate	194	29.1%	45,937	38.0%	1.5%	0.9%	0.1%	0.3%	27.4%	36.8%
MEDICAL/CLINICAL ASSISTANT.	Certificate	121	29.7%	82,219	44.3%	0.0%	0.0%	0.7%	1.0%	29.0%	43.3%
MEDICAL/CLINICAL ASSISTANT.	Associate's	73	48.3%	54,931	73.7%	0.0%	0.0%	0.0%	0.0%	48.3%	73.7%
MASSAGE THERAPY/THERAPEUTIC MASSAGE.	Certificate	64	23.6%	8,229	23.5%	0.0%	0.0%	0.4%	0.3%	23.2%	23.2%
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Associate's	39	42.4%	40,068	54.1%	0.0%	0.0%	0.0%	0.0%	42.4%	54.1%
PHARMACY TECHNICIAN/ASSISTANT.	Certificate	36	23.5%	8,278	30.3%	0.7%	1.1%	1.3%	0.0%	21.6%	29.1%
CULINARY ARTS/CHEF TRAINING.	Associate's	32	88.9%	24,514	96.6%	0.0%	0.0%	0.0%	0.0%	88.9%	96.6%
GRAPHIC DESIGN.	Associate's	32	59.3%	11,358	85.5%	0.0%	0.0%	0.0%	0.0%	59.3%	85.5%
CRIMINAL JUSTICE/SAFETY STUDIES.	Associate's	31	66.0%	21,117	86.2%	0.0%	0.0%	0.0%	0.0%	66.0%	86.2%
LEGAL ASSISTANT/PARALEGAL.	Associate's	31	39.2%	12,524	62.7%	0.0%	0.0%	0.0%	0.0%	39.2%	62.7%
INTERIOR DESIGN.	Bachelor's	26	74.3%	8,632	92.8%	0.0%	0.0%	0.0%	0.0%	74.3%	92.3%
MEDICAL ADMINISTRATIVE/EXECUTIVE ASSISTANT AND MEDICAL SECRETARY.	Certificate	26	29.5%	6,276	39.2%	1.1%	0.9%	1.1%	0.4%	27.3%	37.8%
BARBERING/BARBER.	Certificate	25	38.5%	4,306	41.5%	3.1%	1.3%	0.0%	0.0%	35.4%	40.2%
AUTOMOBILE/AUTOMOTIVE MECHANICS	Certificate	23	32.4%	6,807	19.4%	7.0%	1.1%	2.8%	0.9%	22.5%	17.3%

TECHNOLOGY/TECHNICIAN.											
MEDICAL OFFICE ASSISTANT/SPECIALIST.	Certificate	22	30.1%	3,300	31.3%	0.0%	0.0%	0.0%	0.0%	30.1%	31.3%
DENTAL ASSISTING/ASSISTANT.	Certificate	20	13.8%	4,160	19.1%	0.0%	0.0%	0.0%	0.0%	13.8%	19.1%
GRAPHIC DESIGN.	Bachelor's	20	62.5%	12,131	88.0%	0.0%	0.0%	0.0%	0.0%	62.5%	88.0%
HEATING, AIR CONDITIONING, VENTILATION AND REFRIGERATION MAINTENANCE TECHNOLOGY/TECHNICIAN (HAC, HACR, HVAC, HVACR).	Certificate	20	30.3%	6,504	48.2%	1.5%	0.3%	1.5%	0.2%	27.3%	47.7%
MEDICAL INSURANCE CODING SPECIALIST/CODER.	Certificate	20	17.9%	6,522	30.7%	0.0%	0.0%	0.0%	0.0%	17.9%	30.7%
ELECTRICIAN.	Certificate	19	29.7%	5,453	48.0%	0.0%	0.0%	0.0%	0.0%	29.7%	48.0%

Table 23 provides the weighted averages of the median annual loan payment, higher of the mean or median annual earnings, and pCDR for the CIP-credential-level combinations with the most frequent zone or failing programs

in the 2012 GE informational rates sample.

Table 23: Average Annual Loan Payment, Earnings, and pCDR for 20 Most Common Types of Zone or Failing Programs in the 2012 GE Informational Rates Sample (Program Count) [164]

* combines CIP codes 513901 and 511613

CIP Name	Cred	Sector	Annual loan payment			Earnings			Default rate		
			Pass	Zone	Fail	Pass	Zone	Fail	Pass	Zone	Fail
COSMETOLOGY/COSMETOLOGIST, GENERAL.	Certificate	Public	114		363	12,826		12,500	16		30
		Private	239	1,287		12,200	12,912		18	17	
		For-Profit	639	1,191	1,279	12,435	12,057	11,507	15	16	28
MEDICAL/CLINICAL ASSISTANT.	Certificate	Public	271			20,370			13		
		Private	867	1,099	1,486	14,647	13,686	12,266	15	12	22
		For-Profit	932	1,247	1,088	16,259	13,570	14,389	21	25	33
MEDICAL/CLINICAL ASSISTANT.	Associate's	Public									
		Private									
		For-Profit	1,332	1,842	2,341	20,311	19,571	17,603	18	20	30
MASSAGE THERAPY/THERAPEUTIC MASSAGE.	Certificate	Public	307			18,750			12		
		Private	916	1,145		20,003	14,098		15	15	
		For-Profit	857	1,209	1,142	17,081	13,203	13,463	19	23	34
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Associate's	Public									
		Private									

[164] Averages include earnings and loan payment data from programs with D/E rates measure n-size less than 30 (if available) in instances where no programs met minimum n-size 30.

		For-Profit	1,497	2,196	1,723	27,027	24,289	27,781	23	17	33
PHARMACY TECHNICIAN/ASSISTANT.	Certificate	Public	374		0	23,035		23,411	12		30
		Private	832		800	15,020		17,435	16		35
		For-Profit	948	1,329	849	17,808	13,861	15,437	19	24	34
CULINARY ARTS/CHEF TRAINING.	Associate's	Public									
		Private									
		For-Profit	2,288	2,197	4,368	25,784	22,980	22,259	15	22	27
GRAPHIC DESIGN.	Associate's	Public									
		Private									
		For-Profit	1,650	2,089	3,152	21,697	20,535	19,633	19	17	30
CRIMINAL JUSTICE/SAFETY STUDIES.	Associate's	Public									
		Private									
		For-Profit	1,450	1,998	1,972	24,091	20,887	22,794	19	22	33
LEGAL ASSISTANT/PARALEGAL.	Associate's	Public									
		Private									
		For-Profit	1,844	2,505	2,528	24,588	23,214	20,264	20	23	27
INTERIOR DESIGN.	Bachelor's	Public									
		Private									
		For-Profit	2,678	2,774	4,077	25,277	26,111	25,075	13	15	14
MEDICAL ADMINISTRATIVE/EXECUTIVE ASSISTANT AND MEDICAL SECRETARY.	Certificate	Public	323			18,941			13		34
		Private	0		736	7,550		13,051	24		43
		For-Profit	601	1,388	1,276	11,790	13,856	13,808	21	28	32
BARBERING/BARBER.	Certificate	Public	114		1,375	8,227		3,979	30		49
		Private	0			7,128					
		For-Profit	87	842	944	7,342	8,209	8,726	18	19	37

AUTOMOBILE/AUTOMOTIVE MECHANICS TECHNOLOGY/TECHNICIAN.	Certificate	Public	509		422	25,656		28,084	16		34
		Private	719		522	20,997		13,807	20		38
		For-Profit	1,241		1,457	24,567		18,817	18		37
MEDICAL OFFICE ASSISTANT/SPECIALIST.	Certificate	Public	112			14,973			19		
		Private	628			14,010			27		
		For-Profit	894	1,092	1,143	14,289	11,406	12,429	23	23	30
DENTAL ASSISTING/ASSISTANT.	Certificate	Public	418			23,173			9		
		Private	1,081			16,332			11		
		For-Profit	927	1,268	972	17,051	14,382	15,528	19	18	34
GRAPHIC DESIGN.	Bachelor's	Public									
		Private									
		For-Profit	2,959	2,783	3,932	32,888	27,277	26,636	12	18	21
HEATING, AIR CONDITIONING, VENTILATION AND REFRIGERATION MAINTENANCE TECHNOLOGY/TECHNICIAN (HAC, HACR, HVAC, HVACR).	Certificate	Public	381		771	24,820		25,735	13		39
		Private	733		454	23,631		24,627	18		36
		For-Profit	961	2,151	1,188	21,070	21,808	21,106	22	27	38
MEDICAL INSURANCE CODING SPECIALIST/CODER.	Certificate	Public	249			25,452			11		
		Private	1,119			16,645			10		
		For-Profit	997	1,333	1,012	17,710	15,076	14,290	20	21	36
ELECTRICIAN.	Certificate	Public	713			31,729			10		
		Private	352			14,056			23		
		For-Profit	849	2,009	1,332	19,005	21,614	21,131	22	21	38

Table 24 provides the 20 CIP-credential level combinations with the highest FY 2010 title IV enrollment in zone and failing programs in the 2012 GE informational rates sample.

Table 24: 20 Most Common Types of Zone and Failing Programs in the 2012 GE Informational Rates Sample (Title IV Enrollment)

* combines CIP codes 513901 and 511613

CIP Name	Cred	All sectors				Public		Private		For-profit	
		Zone/Fail Programs	% Zone/Fail programs in CIP-cred	Zone/Fail t4 students	% Zone/Fail t4 students in CIP-cred	% Zone/Fail programs in CIP-cred	% Zone/Fail t4 students in CIP-cred	% Zone/Fail programs in CIP-cred	% Zone/Fail t4 students in CIP-cred	% Zone/Fail programs in CIP-cred	% Zone/Fail t4 students in CIP-cred
MEDICAL/CLINICAL ASSISTANT.	Certificate	121	29.7%	82,219	44.3%	0.0%	0.0%	0.7%	1.0%	29.0%	43.3%
OFFICE MANAGEMENT AND SUPERVISION.	Associate's	2	28.6%	58,526	98.7%	0.0%	0.0%	0.0%	0.0%	28.6%	98.7%
MEDICAL/CLINICAL ASSISTANT.	Associate's	73	48.3%	54,931	73.7%	0.0%	0.0%	0.0%	0.0%	48.3%	73.7%
COSMETOLOGY/COSMETOLOGIST, GENERAL.	Certificate	194	29.1%	45,937	38.0%	1.5%	0.9%	0.1%	0.3%	27.4%	36.8%
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Associate's	39	42.4%	40,068	54.1%	0.0%	0.0%	0.0%	0.0%	42.4%	54.1%
MEDICAL OFFICE ASSISTANT/SPECIALIST.	Associate's	7	36.8%	32,202	90.8%	0.0%	0.0%	0.0%	0.0%	36.8%	90.8%
HEALTH INFORMATION/MEDICAL RECORDS TECHNOLOGY/TECHNICIAN.	Associate's	5	27.8%	28,615	88.0%	0.0%	0.0%	0.0%	0.0%	27.8%	88.0%
CORRECTIONS AND CRIMINAL JUSTICE, OTHER.	Associate's	3	75.0%	28,301	99.3%	0.0%	0.0%	0.0%	0.0%	75.0%	99.3%
BEHAVIORAL SCIENCES.	Associate's	1	100.0%	27,090	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
COMPUTER SYSTEMS NETWORKING AND TELECOMMUNICATIONS.	Associate's	10	27.8%	26,759	80.0%	0.0%	0.0%	0.0%	0.0%	27.8%	80.0%
CRIMINAL JUSTICE/LAW ENFORCEMENT ADMINISTRATION.	Associate's	15	60.0%	24,858	92.9%	0.0%	0.0%	0.0%	0.0%	60.0%	92.9%
CULINARY ARTS/CHEF TRAINING.	Associate's	32	88.9%	24,514	96.6%	0.0%	0.0%	0.0%	0.0%	88.9%	96.6%
ELECTRICAL, ELECTRONIC AND COMMUNICATIONS ENGINEERING	Associate's	5	31.3%	23,540	95.8%	0.0%	0.0%	0.0%	0.0%	31.3%	95.8%

TECHNOLOGY/TECHNICIAN.											
CRIMINAL JUSTICE/SAFETY STUDIES.	Associate's	31	66.0%	21,117	86.2%	0.0%	0.0%	0.0%	0.0%	66.0%	86.2%
BEHAVIORAL SCIENCES.	Bachelor's	1	50.0%	18,853	97.5%	0.0%	0.0%	0.0%	0.0%	50.0%	97.5%
ACCOUNTING TECHNOLOGY/TECHNICIAN AND BOOKKEEPING.	Associate's	12	27.3%	18,491	69.6%	0.0%	0.0%	0.0%	0.0%	27.3%	69.6%
TEACHER ASSISTANT/AIDE.	Associate's	1	100.0%	16,025	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
HUMAN SERVICES, GENERAL.	Associate's	2	66.7%	15,790	99.7%	0.0%	0.0%	0.0%	0.0%	66.7%	99.7%
HUMAN SERVICES, GENERAL.	Bachelor's	1	50.0%	14,385	98.8%	0.0%	0.0%	0.0%	0.0%	50.0%	98.8%
CAD/CADD DRAFTING AND/OR DESIGN TECHNOLOGY/TECHNICIAN.	Associate's	6	85.7%	14,355	100.0%	0.0%	0.0%	0.0%	0.0%	85.7%	100.0%

Table 25 provides weighted averages of the median annual loan payment, higher of the mean or median annual earnings, and pCDR for the CIP-credential level combinations in the 2012 GE informational rates sample

with the highest FY 2010 title IV enrollment in zone and failing programs.

Table 25: Average Annual Loan Payment, Earnings, and pCDR of 20 Most Common Types of Zone and Failing Programs in the 2012 GE Informational Rates Sample (Title IV Enrollment)[165]

* combines CIP codes 513901 and 511613

CIP Name	Cred	Sector	Annual loan payment			Earnings			Default rate		
			Pass	Zone	Fail	Pass	Zone	Fail	Pass	Zone	Fail
MEDICAL/CLINICAL ASSISTANT.	Certificate	Public	271			20,370			13		
		Private	867	1,099	1,486	14,647	13,686	12,266	15	12	22
		For-profit	932	1,247	1,088	16,259	13,570	14,389	21	25	33
OFFICE MANAGEMENT AND SUPERVISION.	Associate's	Public									
		Private									
		For-profit	1,985		1,901	37,966		38,465	13		36
MEDICAL/CLINICAL ASSISTANT.	Associate's	Public									
		Private									
		For-profit	1,332	1,842	2,341	20,311	19,571	17,603	18	20	30
COSMETOLOGY/COSMETOLOGIST, GENERAL.	Certificate	Public	114		363	12,826		12,500	16		30
		Private	239	1,287		12,200	12,912		18	17	
		For-profit	639	1,191	1,279	12,435	12,057	11,507	15	16	28
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Associate's	Public									
		Private									
		For-profit	1,497	2,196	1,723	27,027	24,289	27,781	23	17	33

[165] Averages include earnings and loan payment data from programs with D/E rates measure n-size less than 30 (if available) in instances where no programs met minimum n-size 30.

MEDICAL OFFICE ASSISTANT/SPECIALIST.	Associate's	Public									
		Private									
		For-profit	1,388	1,459	2,156	19,303	15,431	23,357	15	14	36
HEALTH INFORMATION/MEDICAL RECORDS TECHNOLOGY/TECHNICIAN.	Associate's	Public									
		Private									
		For-profit	1,591	2,840	2,625	20,861	27,632	17,430	18	23	45
CORRECTIONS AND CRIMINAL JUSTICE, OTHER.	Associate's	Public									
		Private									
		For-profit	2,113		2,076	27,653		31,022	21		44
BEHAVIORAL SCIENCES.	Associate's	Public									
		Private									
		For-profit			2,335			18,781			38
COMPUTER SYSTEMS NETWORKING AND TELECOMMUNICATIONS.	Associate's	Public									
		Private									
		For-profit	2,314	2,947	4,101	32,290	31,055	27,949	24	25	33
CRIMINAL JUSTICE/LAW ENFORCEMENT ADMINISTRATION.	Associate's	Public									
		Private									
		For-profit	1,781	1,877	2,989	24,074	21,126	20,085	24	21	34
CULINARY ARTS/CHEF TRAINING.	Associate's	Public									
		Private									
		For-profit	2,288	2,197	4,368	25,784	22,980	22,259	15	22	27
ELECTRICAL, ELECTRONIC AND COMMUNICATIONS ENGINEERING	Associate's	Public									
		Private									

TECHNOLOGY/TECHNICIAN.		For-profit	1,664	1,962	4,154	32,337	20,906	30,896	18	14	38
CRIMINAL JUSTICE/SAFETY STUDIES.	Associate's	Public									
		Private									
		For-profit	1,450	1,998	1,972	24,091	20,887	22,794	19	22	33
BEHAVIORAL SCIENCES.	Bachelor's	Public									
		Private									
		For-profit	2,128	2,657		43,331	29,449		7	25	
ACCOUNTING TECHNOLOGY/TECHNICIAN AND BOOKKEEPING.	Associate's	Public									
		Private									
		For-profit	1,853	2,302	2,074	25,462	25,281	28,369	19	8	32
TEACHER ASSISTANT/AIDE.	Associate's	Public									
		Private									
		For-profit			2,170			14,637			40
HUMAN SERVICES, GENERAL.	Associate's	Public									
		Private									
		For-profit			2,248			22,588	24		42
HUMAN SERVICES, GENERAL.	Bachelor's	Public									
		Private									
		For-profit	2,005	2,974		32,935	31,245		26	19	
CAD/CADD DRAFTING AND/OR DESIGN TECHNOLOGY/TECHNICIAN.	Associate's	Public									
		Private									
		For-profit	2,365	3,160	4,241	33,819	26,678	28,249	17	26	37

Table 26 provides the percentage of institutions (entities with unique OPEID numbers) in the 2012 GE informational rates sample with all passing programs and the percentage of all institutions

that have at least one zone or failing program.

Tables 22 through 25 demonstrate that, in many cases, for the most common for-profit program types that would fail or fall in the zone under the proposed regulations, some for-profit institutions are offering the same exact program but with better outcomes for students. These programs are resulting in less debt, higher earnings, and lower default rates.

Table 26: Program Results by Institution in the 2012 GE Informational Rates Sample

All sectors			Public			Private			For-prof		
Total OPEIDs	% w/ all pass programs	% w/ at least 1 fail or zone program	Total	% w/ all pass programs	% w/ at least 1 fail or zone program	Total	% w/ all pass programs	% w/ at least 1 fail or zone program	Total	% w/ all pass programs	% w/ at least 1 fail or zone program
2,420	70%	30%	726	94%	6%	173	88%	12%	1,521	56%	44%

Table 27 provides the concentration of zone and failing programs at institutions in the 2012 GE informational rates sample.

Table 27: Concentration of Zone and Failing Programs by Institution in the 2012 GE Informational Rates Sample

All sectors			Public			Private			For-prof		
Total OPEIDs	Total fail & zone programs	% OPEIDs responsible for 90% fail & zone programs	Total	Total fail & zone programs	%public OPEIDs responsible for 90% public fail & zone programs	Total	Total fail & zone programs	% private OPEIDs responsible for 90% private fail & zone programs	Total	Total fail & zone programs	% for-profit OPEIDs responsible for 90% for-profit fail & zone programs
2,420	1,965	22%	726	54	5%	173	33	10%	1,521	1,878	32%

Table 28 provides the concentration of title IV enrollment in zone and failing programs at institutions in the 2012 GE informational rates sample.

Table 28: Concentration of Title IV Enrollment in Zone and Failing Programs by Institution in the 2012 GE Informational Rates Sample

All sectors			Public			Private			For-profit		
Total T4 Students	Total t4 students in fail & zone programs	% OPEIDs responsible for 90% of t4 students in fail & zone programs	Total T4 Students	Total t4 students in fail & zone programs	% public OPEIDs responsible for 90% of t4 students in public fail & zone programs	Total T4 Students	Total t4 students in fail & zone programs	% private OPEIDs responsible for 90% of t4 students in private fail & zone programs	Total T4 Students	Total t4 students in fail & zone programs	% for-profit OPEIDs responsible for 90% of t4 students in for-profit fail & zone programs
2,914,376	1,145,003	8%	195,087	12,922	3%	52,305	6,647	6%	2,666,984	1,125,434	11%

Table 29 provides earnings information for programs in the 2012 GE informational rates sample.

TABLE 29—PROGRAMS IN THE 2012 GE INFORMATIONAL RATES SAMPLE BY EARNINGS LEVEL

Earnings level	All sectors				Public		Private		For-profit	
	Programs	% of all D/E n30 programs with earnings data	t4 students	% of all t4 students in D/E n30 programs with earnings data	Programs	t4 students	Programs	t4 students	Programs	t4 students
Less than Poverty Guidelines for 1 person ($11,490)	631	11.4	115,581	4.6	60	6,108	63	11,086	508	98,387
Less than Federal min wage ($15,080)	1,492	26.9	351,581	13.9	137	16,223	95	20,037	1,260	315,321
Less than 150% of Poverty Guidelines for 1 person ($17,235)	2,090	37.7	540,381	21.4	189	29,069	118	25,105	1,783	486,207

Discussion of Costs, Benefits, and Transfers

Assumptions and Methodology for Costs, Benefits, and Transfers and Net Budget Impacts

Assumptions

We made assumptions in three areas in order to estimate the impact of the proposed regulations on the title IV, HEA programs:

1. Program performance under the proposed regulations;
2. Student behavior in response to program performance; and
3. Growth rates of enrollment in GE programs.

Program Performance Assumptions

Given a program's results under the D/E rates and pCDR measures in any year—passing, in the zone, or failing, or not evaluated because the program did not meet the minimum n-size requirements—we developed assumptions for the likelihood that, in the subsequent year, the program's results would place it in any of the following six categories:

1. Passing (program would have to pass both the D/E rates and pCDR measures);
2. In the zone (program would be in the zone under the D/E rates and pass pCDR);
3. Failing for the first time (program would be failing under either or both the D/E rates and pCDR measures);
4. Failing for the second time (program would be failing for the second time under the pCDR measure; a second failure under the D/E rates measure would make the program ineligible);
5. Ineligible under either or both measures (a program could become ineligible in one of three ways: (a) by failing the D/E rates measure for two consecutive years or two out of three consecutive years, (b) by being in the zone for four consecutive years, or (c) by failing pCDR for three consecutive years); and
6. Not evaluated because the program failed to meet the minimum n-size requirements for both the D/E rates and pCDR measures.

The likelihood of each of the year 1-year 2 combinations (e.g., a program could fail in year 1 but pass in year 2) are guided by our observations of the GE programs in our data set for which we were able to calculate D/E rates or pCDR for two consecutive years. For the D/E rates, the first year's results are based on the outcomes of students who completed GE programs in FYs 2007 and 2008, and the second year's results are based on the outcomes of students who completed GE programs in FYs 2008 and 2009. In order to maximize the number of programs in the two-year comparative analysis, we applied a minimum n-size of 10 for the D/E rates. For pCDR, the first year's results are based on the outcomes of students who entered repayment in FY 2008, and the second year's results are based on the outcomes of students who entered repayment in 2009. Table 30 shows the changes in results from year one to year two for the programs for which we could calculate two years of D/E rates or pCDR.

Table 30: Observed Two-Year Program Results

Year 1 result	Year 2 result	% w/ year 2 combined result
Pass	Pass	77%
	Zone	8%
	Fail	8%
	Not Evaluated	7%
Zone	Pass	29%
	Zone	37%
	Fail	30%
	Not Evaluated	4%
Fail	Pass	27%
	Zone	16%
	Fail	57%
	Not Evaluated	0%
Not evaluated	Pass	9%
	Zone	1%
	Fail	1%
	Not Evaluated	89%

The observed changes in the two-year program results from our data set informed, but did not define, our assumptions for year-to-year program results because they are based on years in which there were no regulations regarding GE programs. Our assumptions for year-to-year program results are provided in Table 31.

For year 1 to year 2, the assumed changes are identical to the observed two-year program results. We made one exception to this for programs that failed in two consecutive years because the assumptions must account for the difference in results for a program that failed the D/E rates measure twice, ineligibility, and one that failed the pCDR measure, a second fail. For this combination, fail in year 1 and fail in year 2, we used two data points to determine the percentage of programs that are assumed to be ineligible and the percentage of programs that are assumed to have a second fail. First, we observed in the two-year results that of the programs that fail in year 1, 57 percent fail in year 2. Second, we found that, of all failing programs in the year 2 data set regardless of whether they had a year 1 result, 50 percent (49 percent rounded) failed the D/E rates. We used this to assume that of the 57 percent of year 1 failures that failed in year 2 in our two-year results, half, or 29 percent (28.5 percent rounded) would fail the D/E rates measure for a second consecutive year and therefore become ineligible. The other half, 29 percent (28.5 percent rounded), were assumed to receive a second consecutive pCDR failure, which would place these programs in the second fail category in our assumptions in Table 31. We maintained this even split for each year of our assumptions. After year 1 to year 2, assume some first fail programs may fall into the not evaluated category in subsequent years because program enrollments and completions may fluctuate from year-to-year causing some programs to fall below the minimum n-size requirements for the GE measures.

For the other categories of year 1-year 2 program results, after year 1 to year 2, the assumed changes between program results are guided by the observed two-year results but are adjusted slightly to reflect assumed improved program performance in response to the proposed regulations. So, each year, we assume a modest increase in the percentage of programs that improve from failing to zone or passing and from zone to passing. But, for year 4 to year 5, as provided under the proposed regulations, we assume that some percentage of zone programs would become ineligible.

Because we were only able to determine two years of program results from our data set, we did not have observed results for the second fail category. For the first year that second fail programs would exist, year 2, we assumed that a relatively large percentage of programs would become ineligible in the subsequent year. After that, as with the other categories, we assumed improved program

performance from year to year and gradually decreased the percentage of second fail programs that would become ineligible.

Table 31: Assumed Year-to-Year Program Results

Result	Result in Subsequent Year					
Year 1	Pass	Zone	First Fail	Second Fail	Ineligible	Not Evaluated
Pass	77%	8%	8%	0%	0%	7%
Zone	29%	37%	30%	0%	0%	4%
First Fail	27%	16%	0%	29%	29%	0%
Not Evaluated	9%	1%	1%	0%	0%	89%
Year 2	Pass	Zone	First Fail	Second Fail	Ineligible	Not Evaluated
Pass	79%	7%	7%	0%	0%	7%
Zone	31%	36%	28%	0%	0%	5%
First Fail	28%	18%	0%	26%	26%	2%
Second Fail	20%	20%	0%	0%	55%	5%
Not Evaluated	9%	1%	1%	0%	0%	89%
Year 3	Pass	Zone	First Fail	Second Fail	Ineligible	Not Evaluated
Pass	81%	6%	6%	0%	0%	7%
Zone	35%	35%	25%	0%	0%	5%
First Fail	31%	21%	0%	23%	23%	2%
Second Fail	23%	22%	0%	0%	50%	5%
Not Evaluated	9%	1%	1%	0%	0%	89%
Year 4	Pass	Zone	First Fail	Second Fail	Ineligible	Not Evaluated
Pass	83%	5%	5%	0%	0%	7%
Zone	38%	23%	21%	0%	13%	5%
First Fail	35%	25%	0%	19%	19%	2%
Second Fail	27%	25%	0%	0%	43%	5%
Not Evaluated	9%	1%	1%	0%	0%	89%
Year 5 and after	Pass	Zone	First Fail	Second Fail	Ineligible	Not Evaluated
Pass	85%	4%	4%	0%	0%	7%
Zone	43%	24%	16%	0%	12%	5%
First Fail	40%	30%	0%	14%	14%	2%
Second Fail	30%	30%	0%	0%	35%	5%
Not Evaluated	9%	1%	1%	0%	0%	89%

Student Response Assumptions

Depending on the results that a program receives—passing, in the zone, failing in the first year, failing in the second year, ineligible—we developed assumptions for the likelihood that a student would transfer to a passing program, transfer to a zone program, remain in the program, or drop out. These assumptions were developed for two scenarios. The first scenario assumes that students would have a ''low reaction'' to program results. The second assumes that students would have a ''high reaction'' to program results. Our assumptions regarding student responses to program results are provided in Table 32. These student response rates are based on our best judgment and are presented to facilitate comment on the estimated impacts of the proposed regulations.

Table 32: Assumed Student Response to Program Results

Response of title IV students	Rate of student response	
	Low Reaction Scenario	High Reaction Scenario
Program receives zone result		
Transfers to passing program	30%	45%
Remains in program	67%	47%
Drops out	3%	8%
Program fails for first time		
Transfers to passing program	20%	30%
Transfers to zone program	15%	33%
Remains in program	60%	25%
Drops out	5%	12%
Program fails for second time		
Transfers to passing program	30%	35%
Transfers to zone program	22%	30%
Remains in program	40%	20%
Drops out	8%	15%
Programs becomes ineligible		
Transfers to passing program	35%	40%
Transfers to zone program	30%	30%
Remains in program	25%	10%
Drops out	10%	15%

Enrollment Growth Rate Assumptions

We estimated, for each fiscal year, the rate of growth or decline in enrollment of students in GE programs receiving title IV, HEA program funds. This estimate is based on the Department's President's Budget (PB) 2015 loan projections by institution type and, for for-profit institutions, level. The budget estimates for growth do not specify credential level, so we based our enrollment estimates for programs at public and private non-profit institutions on the estimates for 2-year or less institutions because the budget estimates for 4-year institutions would be driven to a greater extent by degree programs not subject to the proposed

regulations. The 2-year or less category is the closest approximation of GE programs available in the budget projections, and so we applied these projections to public and private non-profit institutions. For private for-profit institutions, the estimates are split into rates for 2-year or less and 4-year private for-profit institutions. For the PB 2015 estimates, the Department had data through September 2013, so the estimates for 2010–2011 through 2012–2013 are based on actual data showing a decline in Stafford subsidized loans for 2-year public and private non-profit institutions, 2-year or less private for-profit institutions, and 4-year for-profit institutions. Our data also included the first quarter of the 2013–2014 award year. The first quarter generally represents about 50 percent of the loans in a given year, which was the basis for our estimate that enrollment will decline in the 2013–2014 and 2014–2015 award years. For subsequent years, we assumed a reversion to long-run historical averages for the relevant institutional categories.

Table 33: Assumed Enrollment Growth Rates of Title IV Students in GE Programs

Sector	2010-16	2017	2018	2019	2020	2021	2022	2023
Public and Private Nonprofit	-6.00%	3%	3%	3%	3%	3%	3%	3%
For-Profit 4-year	-33%	2%	2%	2%	2%	2%	2%	2%
For-Profit 2-year or less	-32%	3%	3%	3%	3%	3%	3%	3%

Estimates based on U.S. Department of Education Budget Service PB 2015 assumptions for growth in title IV, HEA program loans

Methodology for Net Budget Impacts

To calculate the net budget impacts estimate, we developed a simple model based on the assumptions previously described for the estimated yearly rate of enrollment change of students receiving title IV, HEA program funds in GE programs, program results, and student response to program results.

We estimated the enrollment of students receiving title IV, HEA programs funds for FYs 2016–2024 by applying the enrollment growth assumptions to the enrollment of students receiving title IV, HEA program funds for FY 2010 that we determined based on data received from institutions through reporting under the 2011 Prior Rule. We then assumed that the program results—passing, zone, failing, and not evaluated—for 2016 would be identical to those under the 2012 GE informational rates but applied a minimum n-size of 15 for the D/E rates calculations. In order to ensure as accurate an estimate as possible, the distribution for the budget estimate is based on a D/E rates n-size of 15 because we assume these programs would have 30 students who completed the program over a 4-year period and may be subject to the proposed regulations. It is important to note that the results provided in the ''Analysis of the Proposed Regulations'' section are based on a minimum n-size of 30 for the D/E rates measure. The estimated 2016 enrollment and program results were used to establish an initial 2016 distribution of students by program result. Table 34 provides the estimated initial 2016 distribution of programs and title IV enrollment by program result.

Table 34: Estimated 2016 Program Results (Program Count and Title IV Enrollment

	Programs		FY 2010 Enrollment		Estimated FY 2016 Enrollment	
Result	#	%	#	%	#	%
Pass	7,604	76%	1,844,292	61%	1,324,757	62%
Zone	929	9%	330,409	11%	223,359	10%
Fail	1,453	15%	863,089	28%	585,047	27%
Total	**9,986**		**3,037,790**		**2,133,163**	

The estimated change in enrollment from 2016 to 2017 was then applied to this distribution of students. We then estimated student behavior in response to these results based on our student reaction assumptions to create the distribution of students at the beginning of the subsequent year, 2017, before the programs receive a second determination of their GE measures. Next, we applied our assumed change in year-to-year program results to the initial 2016 program results to create a new distribution of programs, and corresponding enrollment, to which ineligibility was added as a result since the second year of results is the first time that programs could become ineligible. We repeated this cycle for each subsequent year to 2024. The student response to program performance is assumed to be constant for each cycle while the year-to-year program transitions assume some institutional learning and improved ability to meet the GE measures over time as reflected in the reduced percentage of failing programs that become ineligible and increased percentage of programs that pass the GE measures in later years.

This process produced a yearly estimate for the number of students receiving title IV, HEA program funds who will choose to enroll in a better-performing program, remain in a zone, failing, or ineligible program, or will choose to drop out of postsecondary education altogether after their program receives a zone or failing result or becomes ineligible. The estimated net savings for the title IV, HEA programs results from students who drop out of postsecondary education in the year after the program that they are enrolled in receives rates that are zone or failing or who remain at a program that becomes ineligible for title IV, HEA program funds. We assume no budget impact on title IV, HEA programs from students who transfer from programs that are failing or in the zone to better-performing programs as the students' eligibility for title IV, HEA program funds carries with them across programs. To estimate the yearly Pell Grant and loan volume that would be removed from the system based on the low reaction and high reaction scenarios, we multiplied the number who leave postsecondary education or who remain in ineligible programs by the average Pell grant amount and average loan amount for each type of title IV, HEA program loan, from NPSAS 2012, for students who received some type of title IV aid by sector and credential level. To determine the estimated subsidy cost of the reduced loan volume in the ''Net Budget Impacts'' section, the yearly loan volumes were multiplied by the PB 2015 subsidy rates for the relevant loan type.

Methodology for Costs, Benefits, and Transfers

The estimated number of students for each response category was used to quantify the costs and transfers in the ''Discussion of Costs, Benefits, and Transfers'' section of this analysis. We quantify a transfer of title IV, HEA program funds from programs that lose students to programs that gain students. We also quantify the transfer of instructional expenses as students shift programs as well as the cost associated with additional instructional expense to educate the students who transfer to better-performing programs. We calculated estimated costs and transfers for each year from 2017 to 2024.

In this analysis, student transfers could be of students who enrolled in a program and switch programs or prospective students who choose an alternative program to one they would have chosen in the absence of the proposed regulations. Based on our assumptions, the average number of yearly transfers between 2017 and 2024, rounded to the nearest thousand, would be 172,000 for the low reaction scenario and 233,000 for the high reaction scenario, respectively.

For both the low student reaction and high student reaction scenarios, we multiplied the estimated number of students receiving title IV, HEA program funds transferring from ineligible, failing, or zone programs each year by the average Pell Grant, Stafford subsidized loan, unsubsidized loan, PLUS loan, and GRAD PLUS loan, as determined by NPSAS 2012, to calculate the amounts of student aid that could shift with students each year. In order to annualize the amount of student aid transfers over the 2014–2024 budget window, we made two separate total net present value (NPV) calculations of each year's estimated amount of transfer in student aid, one calculation using a discount rate of 3 percent, and the other using a discount rate of 7 percent. These two discount rates are standards set by OMB for use in the Accounting Statement provided in Table 41. As provided in Table 41, the estimated range for the amount of student aid transfers annualized over the 2014–2024 budget window would be $1.4 billion (low reaction) to $2.0 billion (high reaction) at a 7 percent discount rate and $1.35 billion (low reaction) to $1.8 billion (high reaction) at a 3 percent discount rate.

As stated, we also quantify the transfer of instructional expenses as students shift programs as well as the cost associated with additional instructional expense to educate the students who transfer to better-

performing programs. For the transfer of instructional expenses, we applied the $4,529 average for-profit instructional expense per enrollee for 2010–2011 from IPEDS to the estimated number of annual student transfers from 2017–2024. We estimate that the range of annualized transfers in instructional expenses would be $705 million (low reaction) to $962 million (high reaction) at a 7 percent discount rate and $660 million (low reaction) to $896 million (high reaction) at a 3 percent discount rate.

For the analysis of the additional cost of educating students at better-performing programs, we collected IPEDS data on instructional expenses for 2010–2011 and applied the expense per enrollee to each institution's programs and determined the average instructional expense per enrollee of passing, zone, and failing programs in the 2012 GE informational rates. We applied a difference of $1,212 for those who transfer from failing to passing programs and $924 for those who transfer from zone to passing programs to the estimated number of students who will transfer between 2017 and 2024. As provided in Table 41, we estimate that the range of the additional annualized cost of educating students at better-performing programs over the 2014–2024 budget window would be $173 million (low reaction) to $236 million (high reaction) at a 7 percent discount rate and $162 million (low reaction) to $230 million (high reaction) at a 3 percent discount rate.

Discussion of Costs, Benefits, and Transfers

The potential primary benefits of the proposed regulations are: (1) Improved and standardized market information about GE programs that would increase the transparency of student outcomes for better decision making by students, prospective students, and their families, the public, taxpayers, and the Government, and institutions and lead to a more competitive marketplace that encourages improvement; (2) improvement in the quality of programs and reduction in costs and student debt; (3) elimination of poor performing programs; (4) better return on educational investment for students, prospective students, and their families, as well as for taxpayers and the Federal Government; and (5) for institutions with high-performing programs, potential growth in enrollments and revenues resulting from the additional market information that would permit those institutions to demonstrate to consumers the value of their GE programs.

We have considered and determined the primary costs and benefits of the transparency framework and accountability framework for the following groups or entities that we expect to be affected by the proposed regulations:

- Students
- Institutions
- Federal, State, and local government

We discuss first the broad benefits that we would expect to result from improved market information. We then describe the impact of the proposed regulations—both the costs and the benefits—for each of students, institutions, and the Federal Government and State and local governments.

Improved Market Information

The proposed regulations would provide a standardized process and format for students, prospective students, and their families to obtain information about borrowing, earnings, completion, and the incidence of defaults among GE programs. This information would allow them to make educated decisions based on reliable information about a program's costs and the outcomes of former students. The proposed disclosures would provide prospective students with extensive, comparable, and reliable information that would assist them in avoiding overpaying and overborrowing for postsecondary credentials.

As explained in connection with the 2011 Prior Rule, the improved information that would be available as a result of the proposed regulations would also benefit institutions in addition to students, prospective students, and their families. 76 FR 34491. We continue to believe that debt, earnings, and default information would provide a clear indication to institutions about whether their students are successful in securing positions that allow them to repay their loans and avoid default. Id. This information would help institutions determine when it would be prudent to expand programs or whether certain programs should be improved or eliminated or offered at a reduced cost. Id. Additionally, institutions may be encouraged to better prepare students for jobs in well-paying and in-demand fields in order to meet the requirements of the GE measures. Id. This effect could create an incentive for institutions to provide higher-quality and more comprehensive training, so that they prepare students for jobs with better salaries and employment prospects. 76 FR 34492.

The information provided in the disclosures would also allow the public, taxpayers, and the Government to monitor the results of the Federal investment in these programs, and would allow institutions to see which programs produce exceptional results for students so that those programs may be emulated.

Students

Students would benefit from lower tuition prices or improved program quality as institutions with failing or zone programs seek to comply with the proposed regulations. Lower tuition may also result in reduced educational debt for students. Efforts to improve programs by offering student services to increase persistence and completion, work with employers to ensure graduates have needed skills, improve academic quality, and help students with career planning could lead to better outcomes and higher earnings over time. Students who graduate with manageable debts and adequate earnings would be able to save for retirement or other goals, form families, or take out other debt for home ownership or business opportunities.

Students enrolled in programs that do not pass the proposed D/E rates measure or pCDR measure would be particularly affected by the proposed regulations. Based on the assumptions and methodology described previously in this section, we estimate that the FY 2010 enrollment of students who received title IV, HEA program funds in programs that would fail either GE measure or fall in the zone under the D/E rates measure is approximately 1.2 million. We estimate that, in 2016, approximately 2.9 million students receiving title IV, HEA funds would be enrolled in programs evaluated under the proposed regulations, of which approximately 585,000 would be in failing programs and 223,000 in zone programs, totaling 808,000. As programs become ineligible for title IV, HEA program funds, students enrolled in those programs (or prospective students who would have enrolled in them) would have to choose among other title IV, HEA programs (at the same or other institutions), or pay for the program without the use of title IV, HEA program funds if the institution continues to offer the program. Similarly, students enrolled in programs that receive a zone or failing result would face a similar choice as to whether to transfer to a higher-performing program or remain in the program. Students who transfer to programs at other postsecondary institutions to continue their education could face increased commuting costs, additional tuition and fees if their credits do not transfer, or other costs

due to disruptions in their educational plans.

Some students may choose to drop out of postsecondary education if their program loses title IV, HEA program eligibility or if the program receives a zone or failing result. We estimate that, under the low and high reaction scenarios, 22,000 current or prospective students in the low reaction scenario, and 45,000 current or prospective students in the high reaction scenario, would not continue postsecondary education in the year after the first program results are released under the proposed regulations. Some of these students may eventually continue their postsecondary education, but others may not return.

The number of programs that could lose eligibility and the number of students who could transfer to another program or drop out of postsecondary education as a result of poor program performance raises a concern about the supply of GE programs available to students. In the short term, the supply of GE program enrollment capacity could be reduced, particularly in locations served by few providers, as programs become ineligible or institutions close programs that receive zone or failing results despite the opportunity to improve during the transition period. Over time, we expect existing or new postsecondary institutions to expand capacity among programs that meet the GE measures and to establish new programs, and that new and expanded programs would perform better than closed programs. Some students could also choose to enroll in programs at for-profit institutions outside of the Federal student aid system. Researchers estimate that 4,600 postsecondary institutions operate outside of the title IV, HEA programs, enrolling approximately 700,000 students, and that these institutions are ''long-lived, surviving and apparently thriving without access to title IV funds,'' and that they provide programs of comparable net price and quality to those operating inside the title IV, HEA system.[166]

Students would not only be affected by the results of the programs in which they are enrolled or plan to enroll in, but also by the proposed requirements that students read the disclosures and students warnings from institutions. We estimate that this would increase the paperwork burden on students by an estimated 2,167,129 hours in the initial year of reporting. The monetized cost of this additional burden on students, using wage data developed using Bureau of Labor Statistics data, available at *www.bls.gov/ncs/ect/sp/ecsuphst.pdf*, is $35,324,203 and is detailed more fully in *Paperwork Reduction Act of 1995.*

Institutions

For institutions, the impact of the proposed regulations would likely be mixed. As noted in connection with the 2011 Prior Rule, institutions with programs that do not pass, including programs that lose eligibility, are likely to see lower revenues and possibly reduced profit margins. 76 FR 34493. On the other hand, institutions with high-performing programs are likely to see growing enrollment and revenue and to benefit from additional market information that permits institutions to demonstrate the value of their programs. Id.

As the proposed regulations are implemented, institutions would inevitably incur costs as they make changes needed to comply with the new regulations. These costs could include but would not be limited to one or more of the following, as they relate to satisfying the requirements of the proposed regulations: (1) Training of staff for additional duties, (2) potential hiring of new employees, (3) purchase of new software or equipment, and (4) procurement of external services. Compliance costs may be administrative in nature or aimed at improving program outcomes under the GE measures. As discussed in connection with the 2011 Prior Rule, an institution could choose to spend more on curriculum development to better link a program's content to the needs of in-demand and well-paying jobs in the workforce. 76 FR 34492. Institutions could also allocate more funds toward other functions, such as hiring better faculty; providing training to existing faculty to improve program outcomes; tutoring or providing other support services to assist struggling students; providing career counseling to help students find jobs; or other areas where increased investment could yield improved performance on the GE measures. Id.

These costs are difficult to quantify as they would vary significantly by institution and ultimately depend on institutional behavior. Institutions where the majority of their programs are passing the proposed GE measures could be inclined to commit only minimal resources toward compliance activities associated with satisfying the requirements of the proposed regulations. Institutions with multiple failing or zone programs could decide to devote significant resources toward compliance activities, depending on their existing capacity levels. Small or single-program institutions with failing or zone programs could decide to commit a significant amount of resources to compliance activities as the suspension of the title IV, HEA program eligibility of one or more of their programs could have severe financial consequences or even lead to closure. However, regardless of performance, we expect that all institutions with GE programs would incur at least minor costs due to compliance-related activities.

Whatever the costs institutions devote to program changes to improve results to comply with the proposed regulations, institutions would incur costs associated with the reporting and disclosure requirements of the proposed regulations. This additional workload is discussed in more detail under *Paperwork Reduction Act of 1995.* As discussed in connection with the 2011 Prior Rule, additional workload would normally be expected to result in estimated costs associated with either the hiring of additional employees or opportunity costs related to the reassignment of existing staff from other activities. 76 FR 34493. In total, the proposed regulations are estimated to increase burden on institutions participating in the title IV, HEA programs by 4,775,248 hours in the first year of reporting as multiple years are reported at once. The monetized cost of this additional burden on institutions in the first year of reporting, using wage data developed using BLS data available at: *www.bls.gov/ncs/ect/sp/ecsuphst.pdf*, is $174,535,314. This cost was based on an hourly rate of $36.55. We would expect this amount to decrease in subsequent years to approximately $29 million.

As discussed in connection with the 2011 Prior Rule, institutions would possibly incur administrative costs from enrolling additional students who transfer to their GE programs in response to the disclosures and warnings for other GE programs. 76 FR 34492. Schools for which their required disclosure metrics reveal less than satisfactory outcomes for current or former students may experience revenue losses via enrollment decreases. We expect a strong response from prospective students who are notified that they may not be able to use title IV, HEA program funds in the future to attend a program they are considering. We also continue to project that some

[166] Goldin, C., and Cellini S. R. Does Federal Student Aid Raise Tuition? New Evidence on For-Profit Colleges. *American Economic Journal:* Economic Policy. Forthcoming.

students may withdraw or transfer completely from an institution while others may transfer into another program at the institution if possible. Id. Institutions with programs of different costs may also incur revenue losses if current or prospective students choose to transfer or enroll in a less expensive program at the same institution. Id. Although lower costs are a driving factor for many passing programs and the transfer of students to passing programs might result in lower revenue across the postsecondary system, students might also examine the disclosure data and elect to attend a program in a different sector, CIP code, or credential level that could result in the student paying more than he or she would have paid for the original program, potentially increasing institutional revenues. Id.

Expenses associated with educating students would also shift. Educating additional students requires a postsecondary education institution to incur additional costs—both fixed costs (for example, additional classroom space) and variable costs (such as hiring additional instructors). Id. As a result, there would be a shift of certain costs from institutions with zone and failing programs to institutions with passing programs. Id. We estimate that, on average over 2017–2024, approximately 172,000 current or prospective students in the low reaction scenario and 233,000 current or prospective students in the high reaction scenario would transfer programs annually. Applying the average instructional expense of $4,529 for for-profit institutions from IPEDS data for 2010–2011,[167] we estimate the annualized transfer of instructional expenses to be $705 million in the low reaction scenario to $962 million in the high reaction scenario at a 7 percent discount rate and $660 million in the low reaction scenario to $896 million in the high reaction scenario at a 3 percent discount rate.

Assuming institutions act rationally in determining program offerings and do not offer programs at a loss for an extended period, a reduction or increase in enrollment would result in some profit loss or gain to sending or receiving institutions. Further, some institutions could decide to lower their tuition prices in response to the proposed regulations in order to ensure the long-term viability of their programs but, in the process, would reduce their revenue levels.

[167] U.S. Department of Education, National Center for Education Statistics, Condition of Education 2010 table 416, available at *https://nces.ed.gov/programs/digest/d12/tables/dt12_416.asp.*

The proposed regulations may lead to increased enrollments and revenue for those institutions with passing programs. As the public gains more information about GE programs, individuals would be able to make informed market decisions and identify high-performing programs that match their interests. As noted in connection with the 2011 Prior Rule, the better and clearer information that would be available about GE programs would also benefit institutions with high-performing programs, which could use their performance on the GE measures to differentiate themselves from competitors. 76 FR 34492. The proposed regulations would allow an institution to demonstrate to prospective students that its programs lead to better wages, lower debt burdens, and a higher likelihood of ability to repay student loan debt than competitor offerings—easily understandable data that tell a clear story about student success. Id.

In the scenarios evaluated in ''Net Budget Impacts,'' we estimate that approximately 172,000 current or prospective students in the low reaction scenario and 233,000 current or prospective students in the high reaction scenario might transfer or elect to attend passing or zone programs annually instead of programs that fail the GE measures or become ineligible for title IV, HEA program funds. We estimate that approximately $1.4 billion in title IV, HEA Pell Grant aid and loan volume in the low reaction scenario and approximately $2.0 billion in the high reaction scenario at a 7 percent discount rate and $1.35 billion in title IV, HEA Pell Grant aid and loan volume in the low reaction scenario and approximately $1.8 billion in the high reaction scenario at a 3 percent discount rate would transfer between failing and ineligible programs to passing or zone programs on an annualized basis. These amounts reflect the anticipated high level of initial transfers as institutions adapt to the proposed regulations and failing and zone programs eventually lose eligibility for title IV, HEA program funds. We would expect the title IV, HEA program funds associated with student transfers related to the proposed regulations to decline in future years. These figures assume students would receive the same amount of title IV, HEA program funds at the new program as the program in which the student is currently enrolled.

As noted in the 2011 Prior Rule, when students transfer programs, the expense of providing instruction shifts with them along with revenues and aid amounts. 76 FR 34492. The added expense of educating students at better-performing programs is a cost, but, as we noted in the regulatory impact analysis of the 2011 Prior Rule, a cost associated with improved program quality. 76 FR 34492. To determine the added instructional costs resulting from student transfers, as described in ''*Methodology for Costs, Benefits, and Transfers,''* we applied the difference in instructional expenses per enrollee of $1,212 for those who transfer from failing to passing programs and $924 for those who transfer from zone to passing programs to the estimated number of students who will transfer from our net budget estimate. The additional cost of educating students who shift from low-performing programs to programs with better results would be approximately $173 million under the low reaction scenario and $236 million under the high reaction scenario at a 7 percent discount rate and $162 million under the low reaction scenario and $220 million under the high reaction scenario at a 3 percent discount rate on an annualized basis.

Federal Government

A primary benefit of the proposed regulations would be improved oversight and administration of the title IV, HEA programs. Additionally, as detailed in ''Net Budget Impacts,'' we anticipate some small savings in the title IV, HEA programs as some students who would have attended programs that fail the GE measures would elect not to pursue postsecondary education. Also, students enrolled in programs that become ineligible may choose to remain in those programs and forego Federal loans or Pell Grants or transfer to a for-profit institution that does not participate in the title IV, HEA programs. As provided in Tables 35 and 36, based on the assumed responses of these students, we estimate a total savings of $666 million to $973 million over the 2014–2024 loan cohorts in the low reaction and high reaction scenarios respectively. This represents our best estimate of the effect on title IV, HEA programs. We assume that most students who transfer out of failing or zone programs to programs with better results would still receive title IV, HEA program funds, and accordingly estimate that the response of these students would have little to no impact on the title IV, HEA programs budget.

State and Local Government

As noted in connection with the 2011 Prior Rule, if States choose to expand enrollment of passing programs, it is not necessarily the case that they will face marginal costs that are similar to their average cost or that they will only

choose to expand through traditional brick-and-mortar institutions. 76 FR 34493. The Department continues to find that many States across the country are experimenting with innovative models that use different methods of instruction and content delivery that allow students to complete courses faster and at a lower cost. Id. Rather than adding additional buildings or campuses, States may instead opt to expand online education offerings or try innovative practices like awarding credit when students demonstrate they have mastered a competency. Id. Forecasting the extent to which future growth would occur in traditional settings versus online education or some other model is outside the scope of this analysis. Id.

We welcome comments on the effects of the proposed regulations on students, institutions, the Federal Government and State and local government, and other stakeholders. Any comments received will be considered in the development of the final regulations.

Net Budget Impacts

We do not expect these regulations to significantly affect Federal costs, as the vast majority of students are typically assumed to resume their education at another program in the event the program they are attending loses eligibility to participate in the title IV, HEA programs. As discussed in connection with the 2011 Prior Rule, scenarios presented in this regulatory impact analysis anticipate that some students would not pursue education if warned about debt burdens or if their program loses eligibility, so we have estimated potential Federal costs under the low reaction scenario and high reaction scenario. 76 FR 34495. We continue to project that estimated savings come from Federal loans and Pell Grants not taken by students who do not pursue an education in each scenario. *Id.* As provided in Tables 35 and 36, the estimated net impact on the Federal budget between the FY 2014 and FY 2024 loan cohorts is savings of $666 million in the low reaction scenario and $973 million in the high reaction scenario. A cohort reflects all loans originated in a given fiscal year. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans.

As discussed in connection with the 2011 Prior Rule, estimated reductions in Pell Grants are offset by increased subsidy costs from reduced unsubsidized and PLUS loan volumes. 76 FR 34495. As provided in Tables 35 and 36, the estimated reductions in Pell Grants of approximately $702 million in the low reaction scenario and $1.0 billion in the high reaction scenario would be offset by increased subsidy costs from reduced unsubsidized and PLUS loan volumes. We continue to believe that the potential savings represent our best estimate of the effect of the regulations on the Federal student aid programs, but student responsiveness to program performance, programs' efforts to improve performance, and potential increases in retention rates could offset the estimated savings. *Id.* Tables 35 and 36 present the net budget impact of the proposed regulations under the low reaction and high reaction scenarios. While Table 37 presents the approximate effect on the estimated initial 37,589 programs that would first be evaluated under the proposed regulations, it does not take into account the addition of new programs.

Table 35: Estimated Net Budget Impacts Summary - Low Reaction Scenario

		2016	2017	2018	2019	2020	2021	2022	2023	2024
Students in GE Programs										
	Overall title IV enrollment	2,933,685	3,006,309	3,080,803	3,157,218	3,235,606	3,316,018	3,398,510	3,483,137	3,569,956
	Model Not Evaluated	800,523	820,339	906,884	1,031,430	1,121,084	1,194,066	1,284,468	1,349,225	1,407,039
	Enrolled in Programs Passing both metrics	1,324,757	1,546,124	1,663,664	1,714,237	1,769,535	1,833,119	1,894,853	1,928,329	1,958,080
	Enrolled in DTE Zone Programs with non-failing CDR	223,359	243,285	277,998	232,054	197,221	161,464	129,139	119,666	118,899
	Enrolled in Programs Failing for the First Time	585,047	359,718	125,970	125,039	105,252	86,758	68,310	67,204	67,494
	Enrolled in Programs Failing for the Second Time (CDR Only)	N/A	-	42,023	13,425	11,788	8,197	4,979	3,920	3,857
	Enrolled in Ineligible Programs	N/A	-	26,264	14,312	9,087	12,990	3,847	2,896	2,762
	Dropping Out/ Not Attending Non-Passing Programs	N/A	36,843	37,999	26,721	21,638	19,424	12,915	11,897	11,825

Estimated Reduced Federal Student Aid Volumes from Students Leaving Post-Secondary Education										
	Pell Grants		102,869,775	179,430,719	114,568,009	85,787,652	90,504,016	46,801,234	41,303,909	40,729,378
	Subsidized Loans		96,609,702	168,511,580	107,596,048	80,567,100	84,996,454	43,953,175	38,790,386	38,250,818
	Unsubsidized Loans		123,809,954	215,955,649	137,889,482	103,250,592	108,927,021	56,328,097	49,711,735	49,020,253
	PLUS Loans		17,456,266	30,448,111	19,441,373	14,557,552	15,357,885	7,941,835	7,008,978	6,911,484
Estimated Net Budget Impact using PB 2015 Subsidy Rates										
	Pell Grants		102,869,775	179,430,719	114,568,009	85,787,652	90,504,016	46,801,234	41,303,909	40,729,378
	Subsidized loans		9,322,836	19,699,004	13,589,381	10,731,538	11,908,003	6,522,651	5,834,074	5,783,524
	Unsubsidized loans		(16,788,630)	(25,072,451)	(14,961,009)	(10,500,585)	(10,456,994)	(4,917,443)	(4,280,180)	(4,225,546)
	PLUS Loans		(4,776,034)	(7,605,938)	(4,560,946)	(3,368,617)	(3,466,275)	(1,727,349)	(1,521,649)	(1,467,999)
	Total		**90,627,947**	**166,451,334**	**108,635,435**	**82,649,987**	**88,488,751**	**46,679,093**	**41,336,153**	**40,819,357**

Table 36: Estimated Net Budget Impacts Summary - High Reaction Scenario

		2016	2017	2018	2019	2020	2021	2022	2023	2024
Students in GE Programs										
	Overall title IV enrollment	2,933,685	3,006,309	3,080,803	3,157,218	3,235,606	3,316,018	3,398,510	3,483,137	3,569,956
	Model Not Evaluated	800,523	820,339	970,928	1,096,383	1,190,704	1,267,518	1,352,007	1,414,172	1,470,962
	Enrolled in Programs Passing both metrics	1,324,757	1,640,410	1,733,613	1,767,377	1,801,943	1,844,311	1,890,862	1,919,538	1,948,611
	Enrolled in DTE Zone Programs with non-failing CDR	223,359	305,422	237,538	188,042	156,615	128,925	101,129	96,826	97,391
	Enrolled in Programs Failing for the First Time	585,047	149,882	59,196	50,616	42,019	34,558	27,432	26,986	27,262
	Enrolled in Programs Failing for the Second Time (CDR Only)	N/A	-	8,755	3,154	2,386	1,636	992	787	774
	Enrolled in Ineligible Programs	N/A	-	4,377	2,071	1,355	3,010	554	429	415
	Dropping Out/ Not Attending Non-Passing Programs	N/A	90,255	66,396	49,575	40,584	36,060	25,534	24,399	24,539

Estimated Reduced Federal Student Aid Volumes from Students Leaving Post-Secondary Education										
	Pell Grants		252,000,095	197,606,926	144,199,049	117,096,932	109,086,314	72,840,622	69,323,764	69,676,587
	Subsidized Loans		236,664,793	185,581,685	135,423,910	109,971,075	102,447,937	68,407,953	65,105,112	65,436,464
	Unsubsidized Loans		303,297,253	237,831,806	173,552,218	140,933,193	131,291,932	87,668,064	83,435,315	83,859,958
	PLUS Loans		42,762,615	33,532,483	24,469,548	19,870,513	18,511,168	12,360,533	11,763,747	11,823,619
Estimated Net Budget Impact using PB 2015 Subsidy Rates										
	Pell Grants		252,000,095	197,606,926	144,199,049	117,096,932	109,086,314	72,840,622	69,323,764	69,676,587
	Subsidized loans		22,838,153	21,694,499	17,104,040	14,648,147	14,352,956	10,151,740	9,791,809	9,893,993
	Unsubsidized loans		(41,127,107)	(27,612,273)	(18,830,416)	(14,332,906)	(12,604,025)	(7,653,422)	(7,183,781)	(7,228,728)
	PLUS Loans		(11,699,852)	(8,376,414)	(5,740,556)	(4,598,037)	(4,177,971)	(2,688,416)	(2,553,910)	(2,511,337)
	Total		**222,011,288**	**183,312,738**	**136,732,117**	**112,814,137**	**106,657,274**	**72,650,524**	**69,377,883**	**69,830,515**

The amounts presented represent our best estimate of the range of the net budget impact given certain assumptions about student and institutional responses to the proposed regulations and the data and results that

Table 37: Estimated Effect of the Proposed Regulations on Programs

	2016	2017	2018	2019	2020	2021	2022	2023	2024
Pass	7,487	8,944	10,201	11,411	12,599	13,725	14,435	14,918	15,255
Zone	988	1,482	1,708	1,779	1,586	1,504	1,434	1,433	1,446
First Fail	1,511	1,171	1,292	1,270	1,158	958	978	985	995
Second Fail	N/A	431	305	297	241	162	134	137	138
Ineligible	N/A	431	541	450	369	247	191	184	186
Not Evaluated	27,603	25,130	23,111	21,409	19,982	18,781	17,778	16,931	16,211
Total	37,589	37,589	37,158	36,617	35,936	35,377	34,950	34,587	34,231

will be generated when the proposed regulations take effect. Many factors could affect whether the net budget impact falls within the range established by the scenarios presented or outside of that range. For example, if students, including prospective students, react more strongly to the consumer disclosures or potential ineligibility of programs than anticipated in the scenarios, the impact on Pell Grants and loans affected could increase substantially. Similarly, if institutions react to the implementation of the proposed regulations by modifying their program offerings, enrollment strategies, or pricing, the estimated enrollments and aid amounts used in the scenarios above could be overstated.

As described in ''Analysis of the Proposed Regulations,'' the data available for analyzing the proposed regulations are subject to several limitations, among them the lack of performance information for certificate programs once disaggregated, the use of the old attribution rules that combined undergraduate and graduate debt at the same institutions, and the inability to predict the extent to which institutions would take advantage of the transition period to reduce the costs to students of failing and zone programs. Although these factors are not explicitly accounted for in the estimates, we expect that they would all operate to reduce the number of failing and zone programs and affected students.

Additionally, as previously stated, we do not estimate any significant budget impact from student transfers when a program they attended or planned to attend loses eligibility for title IV, HEA program funds or when a program's performance is disclosed. Although it is true that programs have varied costs across sector, CIP code, credential level, location, and other factors, the students' eligibility for title IV, HEA program funds carries with them across programs. It is possible that passing and zone programs that students choose to transfer to could have lower prices than the failing or ineligible programs, and the amount of title IV, HEA program funds to GE programs may be reduced as a result of those transfers. However, students or counselors may also use the disclosures and earnings information to choose a different field of study or credential level which could result in increased aid volume. In general, we anticipate that overall aid to students who transfer among GE programs or to non-GE programs will not change significantly, so no net budget impact was estimated for these students. However, an estimated economic impact from transfers as an amount of revenues and instructional expenses that could transfer from zone, failing, and ineligible programs to zone and passing programs that receive students was presented in ''Discussion of Costs, Benefits, and Transfers'' and in the Accounting Statement.

The effects previously described represent the estimated effects of the proposed regulations during the initial period of time after the proposed regulations take effect. We expect, as noted in connection with the 2011 Prior Rule, that the budget effects of the proposed regulations would decline over time as programs that could not comply are eliminated and institutions have more data about program performance under, and are more familiar with, the GE measures. 76 FR 34484. This is similar to the pattern observed when cohort default rates (CDR) were introduced in 1989 with an initial elimination of the worst-performing programs followed by a new equilibrium in which programs complied with the minimum standards in the regulations. Id. We do not expect the impact of the proposed regulations on program results to drop off as sharply as occurred with the introduction of institutional CDR. This is because the inclusion of multiple measures, the need to fail the D/E rates measure at least twice in three consecutive years or not pass in four years and the need to fail the pCDR measure for three consecutive years to be ineligible, the transition period, and the continued introduction of new programs will extend the effect of the proposed regulations on program results.

Alternate Enrollment Projections

In developing the estimated net budget impact, we also analyzed the effects of the proposed regulations based on NCES enrollment projections instead of the PB 2015 budget loan estimates. Although the primary estimate of the net budget impact and the estimates in the ''Discussion of Costs, Benefits, and Transfers'' section are based on the Department's budget projections, we are providing the results of the alternative NCES-based enrollment projections as additional information for commenters.

TABLE 38—ALTERNATE NCES ENROLLMENT GROWTH RATES

Sector	2010–16 (Percent)	2017 (Percent)	2018 (Percent)	2019 (Percent)	2020 (Percent)	2021 (Percent)	2022 (Percent)	2023 (Percent)
Public	7.00	1.50	1.60	1.50	1.30	0.90	1.20	1.20
Private	7.40	1.50	1.70	1.50	1.20	0.90	1.30	1.30

In conducting this analysis, all other assumptions about student and program response were held constant. The estimated NCES-based enrollment of students receiving title IV, HEA program funds in 2016 would be 4.3 million compared to 2.9 million in the primary estimate and the estimated savings for the net budget impact across loan cohorts 2014–2024 would be $988 million in the low reaction scenario to $1.4 billion in the high reaction scenario, compared to the primary estimate of $666 million and $973 million, respectively. Tables 39 and 40 present the estimated net budget impacts under the alternate NCES-based enrollment projections. We welcome comments on the estimates, data, and assumptions discussed in this regulatory impact analysis.

Table 39: Estimated Net Budget Impacts (NCES Enrollment Assumption) - Low Reaction Scenario

		2016	2017	2018	2019	2020	2021	2022	2023	2024
Students in GE Programs										
	Overall title IV enrollment	4,276,789	4,340,693	4,412,644	4,478,297	4,533,648	4,575,946	4,634,444	4,693,690	4,753,695
	Model Not Evaluated	1,015,313	1,030,484	1,175,998	1,366,255	1,484,798	1,560,674	1,674,682	1,748,547	1,809,751
	Enrolled in Programs Passing both metrics	1,968,777	2,297,156	2,458,931	2,502,767	2,548,917	2,604,084	2,653,247	2,662,075	2,665,859
	Enrolled in DTE Zone Programs with non-failing CDR	360,201	386,905	423,737	343,808	285,949	229,897	180,684	164,822	161,456
	Enrolled in Programs Failing for the First Time	932,498	567,859	189,870	184,231	152,108	123,220	95,336	92,432	91,552
	Enrolled in Programs Failing for the Second Time (CDR Only)	N/A	-	65,703	19,936	17,203	11,733	7,003	5,419	5,254
	Enrolled in Ineligible Programs	N/A	-	41,064	21,629	13,281	18,642	5,419	4,009	3,765
	Dropping Out/ Not Attending Non-Passing Programs	N/A	58,289	58,340	39,670	31,392	27,696	18,072	16,386	16,059

Estimated Reduced Federal Student Aid Volumes from Students Leaving Post-Secondary Education										
	Pell Grants		162,749,002	277,547,995	171,154,706	124,731,701	129,380,182	65,590,893	56,944,845	55,349,195
	Subsidized Loans		152,845,018	260,657,993	160,739,197	117,141,234	121,506,835	61,599,402	53,479,503	51,980,955
	Unsubsidized Loans		195,878,202	334,045,685	205,994,970	150,122,095	155,716,821	78,942,581	68,536,542	66,616,081
	PLUS Loans		27,617,343	47,097,912	29,043,731	21,166,078	21,954,892	11,130,306	9,663,133	9,392,363
Estimated Net Budget Impact using PB 2015 Subsidy Rates										
	Pell Grants		162,749,002	277,547,995	171,154,706	124,731,701	129,380,182	65,590,893	56,944,845	55,349,195
	Subsidized Loans		14,749,544	30,470,919	20,301,361	15,603,212	17,023,108	9,141,351	8,043,317	7,859,520
	Unsubsidized loans		(26,561,084)	(38,782,704)	(22,350,454)	(15,267,417)	(14,948,815)	(6,891,687)	(5,900,996)	(5,742,306)
	PLUS Loans		(7,556,105)	(11,765,058)	(6,813,659)	(4,897,831)	(4,955,219)	(2,420,842)	(2,097,866)	(1,994,938)
	Total		**143,381,358**	**257,471,152**	**162,291,953**	**120,169,666**	**126,499,256**	**65,419,716**	**56,989,300**	**55,471,471**

Table 40: Estimated Net Budget Impacts (NCES Enrollment Assumption) - High Reaction Scenario

		2016	2017	2018	2019	2020	2021	2022	2023	2024
Students in GE Programs										
	Overall title IV enrollment	4,276,789	4,340,693	4,412,644	4,478,297	4,533,648	4,575,946	4,634,444	4,693,690	4,753,695
	Model Not Evaluated	1,015,313	1,030,484	1,276,358	1,465,227	1,588,534	1,668,185	1,772,033	1,840,753	1,899,133
	Enrolled in Programs Passing both metrics	1,968,777	2,446,637	2,565,023	2,580,450	2,594,249	2,617,894	2,645,280	2,647,550	2,650,686
	Enrolled in DTE Zone Programs with non-failing CDR	360,201	484,146	360,512	277,234	226,195	183,004	141,100	133,096	132,041
	Enrolled in Programs Failing for the First Time	932,498	236,608	89,132	74,410	60,589	48,996	38,232	37,073	36,945
	Enrolled in Programs Failing for the Second Time (CDR Only)	N/A	-	13,688	4,704	3,474	2,337	1,392	1,087	1,054

	Enrolled in Ineligible Programs	N/A	-	6,844	3,116	1,976	4,304	779	593	565
	Dropping Out/ Not Attending Non-Passing Programs	N/A	142,818	101,086	73,155	58,632	51,226	35,628	33,540	33,271
Estimated Reduced Federal Student Aid Volumes from Students Leaving Post-Secondary Education										
	Pell Grants		398,763,565	301,350,559	212,957,577	169,222,758	155,047,005	101,651,916	95,302,478	94,474,685
	Subsidized Loans		374,497,068	283,012,067	199,998,183	158,924,817	145,611,720	95,465,955	89,502,908	88,725,489
	Unsubsidized Loans		479,935,906	362,693,501	256,307,238	203,669,755	186,608,384	122,344,188	114,702,258	113,705,958
	PLUS Loans		67,667,328	51,137,037	36,137,379	28,715,893	26,310,369	17,249,604	16,172,150	16,031,679
Estimated Net Budget Impact using PB 2015 Subsidy Rates										
	Pell Grants		398,763,565	301,350,559	212,957,577	169,222,758	155,047,005	101,651,916	95,302,478	94,474,685
	Subsidized loans		36,138,967	33,084,111	25,259,770	21,168,786	20,400,202	14,167,148	13,461,237	13,415,294
	Unsubsidized loans		(65,079,309)	(42,108,716)	(27,809,335)	(20,713,214)	(17,914,405)	(10,680,648)	(9,875,864)	(9,801,454)
	PLUS Loans		(18,513,781)	(12,774,032)	(8,477,829)	(6,644,858)	(5,938,250)	(3,751,789)	(3,510,974)	(3,405,129)
	Total		**351,309,443**	**279,551,923**	**201,930,183**	**163,033,472**	**151,594,551**	**101,386,628**	**95,376,877**	**94,683,396**

Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), in Table 35, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of the proposed regulations. This table provides our best estimate of the changes in Federal student aid payments as a result of the proposed regulations. Expenditures are classified as transfers from the Federal Government to students receiving title IV, HEA program funds and from low-performing programs to higher-performing programs. Transfers are neither costs nor benefits, but rather the reallocation of resources from one party to another.

In order to generate the estimates presented, the Department made several assumptions about projected enrollments, aid amounts, programs covered by the proposed regulations, student reaction to program performance, and the likelihood of program results under the GE measures changing from year to year.

TABLE 41—ACCOUNTING STATEMENT

	Low reaction scenario		High reaction scenario	
Category	Benefits			
Improved market information and development of measures linking programs to labor market outcomes	Not Quantified		Not Quantified	
Better return on money spent on education	Not Quantified		Not Quantified	
Category	Costs			
Discount Rate	3%	7%	3%	7%
Additional expense of educating transfer students at passing programs	$162	$173	$220	$236
Cost of Compliance with Paperwork Burden	$54.8 (3%); $58.5 (7%)			
Category	Transfers			
Discount Rate	3%	7%	3%	7%
Transfer of Federal student aid money from failing programs to the Federal government when students drop out of programs	$70	$75	$103	$110
Estimated Transfer of revenues from non-passing programs to passing or zone programs as students transfer	$1,353	$1,447	$1,837	$1,974
Estimated Transfer of instructional expenses from non-passing programs to passing or zone programs as students transfer	$660	$705	$896	$962

Sensitivity Analysis

We have also prepared alternative accounting statements using varied student response and program performance assumptions to demonstrate the sensitivity of the estimated effects of the proposed regulations to these factors. The assumptions about institution and student reactions are critical to this analysis. We offer several scenarios to illuminate how varying these assumptions would affect the title IV, HEA programs and institutions offering GE programs. We attempt to offer extreme scenarios in order to bound the estimates of effects although we believe these extreme scenarios are unlikely to occur.

Alternative Program Performance Assumptions

In addition to the primary program response assumptions provided in Table 31, we created two additional program response scenarios, a negative program response assumption and a positive program response assumption.

Negative Program Response: In this extreme worst case scenario, we assumed institutions would have no success in improving programs over time so the program performance transition rates are held constant. Table 42 presents the program response for this assumption.

TABLE 42—NEGATIVE PROGRAM RESPONSE ASSUMPTION

Result	Result in subsequent year					
Evaluated Year	Pass	Zone	First fail	Second fail	Ineligible	Not evaluated
Pass	25%	50%	20%	0%	0%	5%
Zone	0%	20%	75%	0%	0%	5%
First Fail	0%	0%	0%	0%	100%	0%
Second Fail	0%	0%	0%	0%	100%	0%
Not Evaluated	0%	0%	15%	0%	0%	85%

Positive Program Response: In this best case scenario, we assume institutions would be highly successful in improving program performance and the rate of improvement would accelerate as institutions have more time to adjust to the proposed regulations. Table 43 presents the program response for this assumption.

Table 43: Positive Program Response Assumption

Result	Result in Subsequent Year					
Years 1-3	Pass	Zone	First Fail	Second Fail	Ineligible	Not Evaluated
Pass	80%	15%	0%	0%	0%	5%
Zone	75%	20%	0%	0%	0%	5%
First Fail	50%	40%	0%	0%	0%	10%
Second Fail	50%	40%	0%	0%	0%	10%
Not Evaluated	15%	0%	0%	0%	0%	85%
Year 4 and later	Pass	Zone	First Fail	Second Fail	Ineligible	Not Evaluated
Pass	85%	10%	0%	0%	0%	5%
Zone	85%	10%	0%	0%	0%	5%
First Fail	75%	20%	0%	0%	0%	10%
Second Fail	75%	20%	0%	0%	0%	10%
Not Evaluated	15%	0%	0%	0%	0%	85%

Alternative Student Response Assumptions

Zero Student Response: In this extreme scenario, we assume that students would have no reaction to program results, regardless of the outcome. As a result, there would be no student transfers or drop outs and associated costs or economic transfers in response to the proposed regulations. There would still be a net budget impact due to students remaining in ineligible programs for which they could no longer receive title IV, HEA program funds. We applied the zero student response scenario to the primary program response assumption described in ''Discussion of Costs, Benefits, and Transfers,'' the positive program response alternative assumption, and the negative program response alternative assumption. Under the primary program response assumption, the annualized net budget impact for the no student response scenario would be $157 million at a 3 percent discount rate and $167 million at a 7 percent discount rate. As no programs become ineligible under the positive program response assumption, the net budget impact would be $0 in that scenario. For the negative program response assumption, the annualized net budget impact would be $1 billion.

Student Response Only to Ineligibility: We assumed two scenarios where students would not react to warnings and disclosures, but might have some reaction when a program becomes ineligible for title IV, HEA program funds. The first scenario assumes 50 percent of students would drop out and 50 percent of students would transfer when faced with ineligibility. The second scenario evenly divides the responses between students who would drop out, transfer, and remain in the program. Table 44 presents the student response assumptions for these two scenarios. For transfers in both scenarios, 85 percent of students who transfer are assumed to transfer to passing programs and 15 percent to zone programs. This matches the split of enrollment in passing and zone programs as a percent of enrollment in evaluated programs that did not fail in the 2012 GE informational rates sample.

Table 44: Assumptions for Student Response Only to Ineligibility Scenarios

Response of students receiving title IV, HEA program funds	Rate of Student Response	
	No Reaction Until Ineligibility	
	34% Drop, 33% Transfer and 33% Remain	50% Drop,50% Transfer
Program receives zone result		
Transfers to passing program	33%	0%
Remains in program	33%	100%
Drops out	34%	0%
Program fails for first time		
Transfers to passing program	28%	0%
Transfers to zone program	5%	0%
Remains in program	33%	100%
Drops out	34%	0%
Program fails for second time		
Transfers to passing program	28%	0%
Transfers to zone program	5%	0%
Remains in program	33%	100%
Drops out	34%	0%
Programs becomes ineligible		
Transfers to passing program	28%	42.5%
Transfers to zone program	5%	7.5%
Remains in program	33%	0%
Drops out	34%	50%

The costs and transfers associated with the student response only to ineligibility scenarios are provided in Tables 45 and 46. Only the primary program and negative program response scenarios are provided as no programs reach ineligibility under the positive program assumption.

Table 45: Costs and Transfers Associated with Student Response Only to Ineligibility: 50 Percent Drop Out/50 Percent Transfer

	No Student Reaction Until Ineligibility; Then 50% Drop and 50% Transfer			
Estimates	**Primary Program**		**Negative Program**	
Average Annual Student Transfers over 2017-2024	36,000		288,000	
Average Annual Student Dropouts over 2017-2024	36,000		288,000	
	3%	7%	3%	7%
Better return on money spent on education	Not Quantified		Not Quantified	
Additional expense of educating transfer students at passing programs	$37	$39	$283	$286
Transfer of Federal student aid money from failing programs to the Federal government when students drop out of programs	$81	$85	$633	$640
Estimated Transfer of revenues from non-passing programs to passing or zone programs as students transfer	$281	$297	$2,167	$2,194
Estimated Transfer of instructional expenses from non-passing programs to passing or zone programs as students transfer	$137	$145	$1,057	$1,070

Table 46: Costs and Transfers Associated with Student Response Only to Ineligibility: 34 Percent Drop Out, 33 Percent Transfer, 33 Percent Remain

	No Student Reaction Until Ineligibility; Then 34% Drop, 33% Transfer and 33% Remain			
Estimates	**Primary Program**		**Negative Program**	
Average Annual Student Transfers over 2017-2024	23,000		176,000	
Average Annual Student Dropouts over 2017-2024	24,000		181,000	
	3%	7%	3%	7%
Better return on money spent on education	Not Quantified		Not Quantified	
Additional expense of educating transfer students at passing programs	$24	$25	$174	$177
Transfer of Federal student aid money from failing programs to the Federal government when students drop out of programs	$107	$113	$789	$800
Estimated Transfer of revenues from non-passing programs to passing or zone programs as students transfer	$184	$195	$1,332	$1,354
Estimated Transfer of instructional expenses from non-passing programs to passing or zone programs as students transfer	$90	$95	$649	$660

Strong Student Response to Program Results: We also assumed three scenarios in which students are highly responsive to program performance. The first scenario assumes 100 percent of students would drop out in response to any non-passing program result. The effect of this scenario is reflected in the transfer of title IV, HEA program funds from students at non-passing programs to the Federal Government as they drop out of postsecondary education. The second scenario assumes that 100 percent of students would transfer in response to any non-passing program result, with 85 percent of those who transfer assumed to transfer to passing programs and 15 percent to zone programs. The third scenario evenly divides the responses between students who will drop out, transfer, and remain in the program. Table 47 presents the student response assumptions for these three scenarios.

Table 47: Assumptions for Strong Student Response Scenarios

Response of students receiving title IV, HEA program funds	Rate of student response		
	Strong Student Reactions		
	100% Drop for any Non-Passing Result	100% Transfer for any Non-Passing Result	34% Drop, 33% Transfer and 33% Remain for any Non-Passing Result
Program receives zone result			
Transfers to passing program	0%	100%	33%
Remains in program	0%	0%	33%
Drops out	100%	0%	34%
Program fails for first time			
Transfers to passing program	0%	85%	28%
Transfers to zone program	0%	15%	5%
Remains in program	0%	0%	33%
Drops out	100%	0%	34%
Program fails for second time			
Transfers to passing program	0%	85%	28%
Transfers to zone program	0%	15%	5%
Remains in program	0%	0%	33%
Drops out	100%	0%	34%
Programs becomes ineligible			
Transfers to passing program	0%	85%	28%
Transfers to zone program	0%	15%	5%
Remains in program	0%	0%	33%
Drops out	100%	0%	34%

The costs and transfers associated with the strong student response scenarios are provided in Tables 48, 49, and 50.

Table 48: Costs and Transfers Associated with Strong Student Response: 100 Percent Drop Out Scenario

100% Drop for Any Non-Passing Status						
Estimates	**Positive Program**		**Primary Program**		**Negative Program**	
Average Annual Student Transfers over 2017-2024						
Average Annual Student Dropouts over 2017-2024	312,000		250,000		587,000	
	3%	7%	3%	7%	3%	7%
Better return on money spent on education	Not Quantified		Not Quantified		Not Quantified	
Additional expense of educating transfer students at passing programs	$0	$0	$0	$0	$0	$0
Transfer of Federal student aid money from failing programs to the Federal government when students drop out of programs	$693	$739	$556	$603	$1,302	$1,374
Estimated Transfer of revenues from non-passing programs to passing or zone programs as students transfer	$0	$0	$0	$0	$0	$0
Estimated Transfer of instructional expenses from non-passing programs to passing or zone programs as students transfer	$0	$0	$0	$0	$0	$0

Table 49: Costs and Transfers Associated with Strong Student Response: 100 Percent Transfer Scenario

100% Transfer for Any Non-Passing Status						
Estimates	**Positive Program**		**Primary Program**		**Negative Program**	
Average Annual Student Transfers over 2017-2024	303,000		349,000		1,739,000	
Average Annual Student Dropouts over 2017-2024						
	3%	7%	3%	7%	3%	7%
Better return on money spent on education	Not Quantified		Not Quantified		Not Quantified	
Additional expense of educating transfer students at passing programs	$301	$324	$322	$347	$1,465	$1,493
Transfer of Federal student aid money from failing programs to the Federal government when students drop out of programs	$0	$0	$0	$0	$0	$0
Estimated Transfer of revenues from non-passing programs to passing or zone programs as students transfer	$2,833	$3,021	$2,750	$2,956	$13,150	$13,385
Estimated Transfer of instructional expenses from non-passing programs to passing or zone programs as students transfer	$1,381	$1,473	$1,341	$1,441	$6,411	$6,526

Table 50: Costs and Transfers Associated with Strong Student Response: 34 Percent Drop Out, 33 Percent Transfer, 33 Percent Remain Scenario

34% Drop, 33% Transfer, and 33% Remain for Any Non-Passing Status						
Estimates	**Positive Program**		**Primary Program**		**Negative Program**	
Average Annual Student Transfers over 2017-2024	85,000		117,000		354,000	
Average Annual Student Dropouts over 2017-2024	110,000		121,000		364,000	
	3%	7%	3%	7%	3%	7%
Better return on money spent on education	Not Quantified		Not Quantified		Not Quantified	
Additional expense of educating transfer students at passing programs	$90	$98	$109	$118	$326	$339
Transfer of Federal student aid money from failing programs to the Federal government when students drop out of programs	$244	$261	$281	$301	$925	$957
Estimated Transfer of revenues from non-passing programs to passing or zone programs as students transfer	$841	$904	$925	$997	$2,721	$2,833
Estimated Transfer of instructional expenses from non-passing programs to passing or zone programs as students transfer	$410	$441	$451	$486	$1,327	$1,381

Return on Investment Analysis

Students who transfer to better-performing programs would be expected to experience higher earnings. However, some students that leave postsecondary education in response to their program's performance under the proposed regulations would lose the associated earnings gains. As an illustrative example, we estimated the change in the lifetime earnings associated with postsecondary education for the estimated number of students who would transfer and who would dropout because of the proposed regulations. We offer this example to underscore that increased earnings from postsecondary education is a necessary condition for students to pay back their student debt obligations.

Assumptions and Methodology

Our budget estimate generates a number of students who drop out in response to a non-passing program result and makes no assumption about their future education. For this analysis, we assume that they do not return to postsecondary education. Table 51 shows the estimated transfers and dropouts used for the analysis of the impact of the proposed regulations on earnings.

Table 51: Estimated Transfers and Dropouts for Return on Investment Analysis

High Reaction Scenario	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**	**2024**
Fail to Zone	0	197,845	104,403	77,756	63,108	57,100	39,360	38,089	38,394
Fail to Pass	0	179,859	103,865	74,542	60,017	56,372	36,871	35,477	35,731
Zone to Pass	0	103,000	127,470	105,593	89,528	68,768	59,140	56,237	56,487
	2016	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**	**2024**
Fail to Drop	0	71,944	43,735	30,803	24,668	23,834	15,020	14,402	14,497
Zone to Drop	0	18,311	22,661	18,772	15,916	12,225	10,514	9,998	10,042
Total Drops	**0**	**90,255**	**66,396**	**49,575**	**40,584**	**36,060**	**25,534**	**24,399**	**24,539**
Low Reaction Scenario	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**	**2024**
Fail to Zone	0	89,929	86,122	55,818	43,701	41,786	24,432	22,433	22,309
Fail to Pass	0	119,906	110,277	71,785	56,648	53,254	31,889	29,396	29,257
Zone to Pass	0	68,666	85,914	78,911	68,740	53,587	46,884	43,537	43,250
	2016	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**	**2024**
Fail to Drop	0	29,976	29,408	18,830	14,764	14,065	8,227	7,543	7,501
Zone to Drop	0	6,867	8,591	7,891	6,874	5,359	4,688	4,354	4,325
Total Drops	**0**	**36,843**	**37,999**	**26,721**	**21,638**	**19,424**	**12,915**	**11,897**	**11,825**

Based on these transfer and dropout assumptions, we calculated the net present value of total lifetime earnings based on the age-profile of earnings for a high school graduate assuming work between ages 24 and 64, as provided in Table 52, and valued each transfer category (fail to zone, fail to pass, zone to pass, fail to drop, and zone to drop) based on the difference in the net present value of lifetime earnings. The net present value was discounted for two rates, 3 percent and 7 percent, and we assumed a return on investment (in terms of the percentage improvement in earnings at every age), using the earnings of a worker with a high school degree as a baseline, of 2 percent for students who attend a failing program, 4 percent for a zone program, and 6 percent for a passing program. We calculated earnings differentials for both the low reaction and high reaction student response scenarios.

Table 52: Wage Profile of High School Workers

Age	Average Salary for HS Workers (CPS)	Fail (2% return)	Zone (4% return)	Pass (6% return)
24	$16,808	$336	$672	$1,008
25	$19,823	$396	$793	$1,189
26	$20,617	$412	$825	$1,237
27	$19,829	$397	$793	$1,190
28	$24,660	$493	$986	$1,480
29	$22,006	$440	$880	$1,320
30	$23,854	$477	$954	$1,431
31	$26,070	$521	$1,043	$1,564
32	$27,042	$541	$1,082	$1,623
33	$26,466	$529	$1,059	$1,588
34	$27,171	$543	$1,087	$1,630
35	$28,851	$577	$1,154	$1,731
36	$30,830	$617	$1,233	$1,850
37	$29,441	$589	$1,178	$1,766
38	$32,280	$646	$1,291	$1,937
39	$28,145	$563	$1,126	$1,689
40	$29,914	$598	$1,197	$1,795
41	$29,845	$597	$1,194	$1,791
42	$32,901	$658	$1,316	$1,974
43	$31,600	$632	$1,264	$1,896
44	$29,614	$592	$1,185	$1,777
45	$30,331	$607	$1,213	$1,820
46	$32,983	$660	$1,319	$1,979
47	$30,504	$610	$1,220	$1,830
48	$32,425	$649	$1,297	$1,946
49	$32,997	$660	$1,320	$1,980
50	$33,579	$672	$1,343	$2,015

51	$31,721	$634	$1,269	$1,903
52	$34,156	$683	$1,366	$2,049
53	$33,552	$671	$1,342	$2,013
54	$32,730	$655	$1,309	$1,964
55	$35,061	$701	$1,402	$2,104
56	$34,222	$684	$1,369	$2,053
57	$31,637	$633	$1,265	$1,898
58	$31,723	$634	$1,269	$1,903
59	$33,428	$669	$1,337	$2,006
60	$27,317	$546	$1,093	$1,639
61	$27,515	$550	$1,101	$1,651
62	$30,987	$620	$1,239	$1,859
63	$28,892	$578	$1,156	$1,734
64	$27,423	$548	$1,097	$1,645
PDV (3% discount rate):		$14 ,794	$29,587	$44,381
PDV (7% discount rate):		$7,305	$14,610	$21,915

Source: Analysis of CPS data

Earnings Differential Estimates

Our return on investment estimates are presented in Table 53. For students who dropout, we estimate a loss of earnings ranging from $2.8 billion and $6.9 billion in the high reaction scenario at 7 percent and 3 percent discounting, respectively, compared to $1.3 billion and $3.3 billion in the low reaction scenario at 7 percent and 3 percent discounting, respectively. For students who remain in postsecondary education and transfer to higher-performing programs, the lifetime gain in earnings ranges between $14.6 billion (7 percent) and $35.5 billion (3 percent) in the high reaction scenario and $11.1 billion (7 percent) and $27.1 billion (3 percent) in the low reaction scenario.

Table 53: Earnings Differential Analysis

	3% DISCOUNT RATE:			7% DISCOUNT RATE:		
High Reaction Scenario	**NPV of switch**		**2016-2026 NPV**	**NPV of switch**		**2016-2026 NPV**
Fail to Zone	$14,794		$8,893,568,138	$7,305		$3,694,289,179
Fail to Pass	$29,587		$16,792,727,610	$14,610		$6,973,249,265
Zone to Pass	$14,794		$9,778,392,031	$7,305		$3,945,222,735
Fail to Drop	-$14,794		-$3,437,997,414	-$7,305		-$1,427,315,398
Zone to Drop	-$29,587		-$3,476,761,611	-$14,610		-$1,402,745,861
Total Cost/Benefit			**$28,549,928,754**			**$11,782,699,920**
Low Reaction Scenario	**NPV of switch**		**2016-2026 NPV**	**NPV of switch**		**2016-2026 NPV**
Fail to Zone	$14,794		$5,521,786,224	$7,305		$2,284,886,349
Fail to Pass	$29,587		$14,369,008,445	$14,610		$5,946,969,853
Zone to Pass	$14,794		$7,199,997,645	$7,305		$2,890,047,931
Fail to Drop	-$14,794		-$1,861,102,532	-$7,305		-$770,113,015
Zone to Drop	-$29,587		-$1,439,999,529	-$14,610		-$578,009,586
Total Cost/Benefit			**$23,789,690,252**			**$9,773,781,532**

Regulatory Alternatives Considered

As part of the development of the proposed regulations, the Department engaged in a negotiated rulemaking process in which we received comments and proposals from non-Federal negotiators representing institutions, consumer advocates, students, financial aid administrators, accreditors, and State Attorneys General. The non-Federal negotiators submitted a variety of proposals relating to placement rates, student protections for failing programs, exemptions for programs with low borrowing or default rates, rigorous approval requirements for existing and new programs, as well as other proposals. Information about these proposals is available on the GE Web site at *http://www2.ed.gov/policy/*

highered/reg/hearulemaking/2012/gainfulemployment.html.

In addition to the proposals from the non-Federal negotiators and the public, the Department considered alternatives to the proposed regulations based on its own analysis. We considered both alternative provisions within the GE measures we have proposed, as well as alternatives to the GE measures themselves. Important alternatives that were considered are discussed below and Table 60 summarizes the estimated impacts of key alternatives considered for the calculation of the D/E rates. We welcome comments on the alternatives discussed and will consider any such feedback in the development of the final regulations.

Alternative Components of D/E Rates Measure

N-Size

For the purpose of calculating the D/E rates measure, we considered reducing the n-size for program evaluation to 10 students who completed a program in a two-year cohort period. As a result, 11,050 programs, or programs accounting for approximately 75 percent of the FY 2010 enrollment of students receiving title IV, HEA program funds, would be subject to evaluation on at least one GE measure, as opposed to 60 percent if we use a program n-size of 30. Although we believe an n-size of 10 students who complete the program would be reasonable for the D/E rates, we elected to retain the n-size of 30 for both GE measures, but to include those who completed over a four-year period if needed to achieve a 30-student cohort for a given program. Our data shows that, using the two-year cohort period, 5,539 programs have enough students who completed the program to satisfy an n-size of 30, with those students representing approximately 60 percent of students who received title IV, HEA program funds for enrolling in a program. Further, we estimate that, by using both a two-year cohort period and a four-year cohort period, we would include in the D/E rates measure calculation approximately 70 percent of students who received title IV, HEA program funds for enrolling in GE programs.

TABLE 54—EFFECT OF N-SIZE ON PROGRAMS EVALUATED UNDER THE D/E RATES MEASURE

Result	N=10		N=30	
	Programs	Enrollment	Programs	Enrollment
Pass	9,023	2,058,028	4,256	1,715,421
Zone	1,271	495,936	832	446,719
Fail	756	395,717	451	359,143
Total	11,050	2,949,681	5,539	2,521,283

Interest Rates

The interest rate used in the D/E rates calculations has a substantial effect on the performance of programs with respect to the D/E rates measure.

TABLE 55—INTEREST RATE IMPACT ON D/E RATES RESULTS (TOTAL 5,539 PROGRAMS)

Interest Rate	3%	4%	5%	6%	7%	8%	9%
Passing Programs	4,555	4,441	4,304	4,185	4,033	3,919	3,795
Zone Programs	670	728	807	855	948	986	1,033
Failing Programs	314	370	428	499	558	634	711

Note: 10–15–20 amortization, minimum program n-size of 30, 2008–2009 two-year cohort period.

The Department considered several options. Some non-Federal negotiators suggested using the actual rates on an individual borrower level, but we believe that would be unnecessarily complicated. Although the calculation of the D/E rates is based on a group of students who completed a program over a particular two- or four-year period, the date on which each of these students may have taken out a loan and, with it, the interest rate on that loan, varies. Averaging the interest rates over the six years prior to the end of the applicable cohort period is designed to approximate the interest rate that a large percentage of the students in the calculation received, even those students who attended four-year programs, and to mitigate any year-to-year fluctuations in the interest rates that would cloud the performance of programs under the D/E rates measure.

TABLE 56—OPTIONS FOR DETERMINING INTEREST RATE[168] FOR D/E RATES CALCULATION

		Four-year average			Three-year average			Two-year average		
2YP	2YPMED	UG (%)	GRAD (%)	MED (%)	UG (%)	GRAD (%)	MED (%)	UG (%)	GRAD (%)	MED (%)
08–09	05–06	6.43	6.43	4.04	6.80	6.80	4.03	6.80	6.80	4.34
11–12	08–09	6.80	6.80	6.43	6.80	6.80	6.80	6.80	6.80	6.80
12–13	09–10	6.80	6.80	6.80	6.80	6.80	6.80	6.80	6.80	6.80
13–14	10–11	6.07	6.45	6.80	5.82	6.34	6.80	5.33	6.11	6.80
14–15	11–12	5.61	6.38	6.80	5.21	6.24	6.80	4.42	5.97	6.80
15–16	12–13	5.26	6.42	6.80	4.75	6.29	6.80	5.19	6.73	6.80
16–17	13–14	4.99	6.53	6.45	5.37	6.90	6.34	5.57	7.09	6.11

Amortization Period

The proposed regulations apply the same 10-, 15-, 20-year amortization periods by credential level as under the 2011 Prior Rule. Accordingly, under the proposed regulations, in calculating the annual loan payment for the purpose of the D/E rates measure, we would use a 10-year amortization period for certificate and associate degree programs, a 15-year amortization period for baccalaureate and master's degree programs, and a 20-year amortization period for doctorate and first professional degree programs. We did consider several options and presented, as an alternative, a 10-year amortization period for all programs, which we believe is reasonable especially in light of the decision to evaluate graduate programs on graduate-level debt only. As discussed in ''§ 668.404 Calculating D/E rates'' in *Significant Proposed Regulations,* we looked at available data on the repayment plan selection of existing borrowers, the repayment patterns of older loan cohorts, and available amortization periods for different loan balances under consolidation loan repayment rules. Although the prevalence of the standard 10-year repayment plan and data related to older cohorts could support 10-year amortization for all credential levels, the Department retained the split amortization approach for the proposed regulations. Growth in loan balances, the introduction of plans with longer repayment periods than were available when those older cohorts were in repayment, and some differentiation in repayment periods by credential level in more recent cohorts contributed to this decision.

As expected, extending the amortization period would reduce the number of programs that fail the D/E rates measure. The greatest effect would be on graduate-level programs. As can be seen in Tables 57 and 58, when the 10-year and 20-year amortization periods are applied, the D/E rates measure failure rate across all sectors and credential levels changes from 9.0 percent (for 10-year amortization) to 2.8 percent (for 20-year amortization), but for first professional degrees, from 70 percent to 30 percent, and from 45.5 percent to 25.8 percent for bachelor's degrees.

[168] Projected interest rates from Budget Service used in calculations requiring interest rates for future award years.

TABLE 57—D/E RATES RESULTS BY SECTOR AND CREDENTIAL (5.42% INTEREST RATE, N-SIZE OF 30, 10-YEAR AMORTIZATION)

Sector & IHE type	Credential level	Programs	Pass	Zone	Fail	Pass%	Zone%	Fail %
Public								
<2 year	Certificate	157	157	0	0	100.00	0.00	0.00
2-year	Certificate	824	823	1	0	99.88	0.12	0.00
4-year	Certificate	86	84	1	1	97.67	1.16	1.16
	Post-Bacc Certificate	26	26	0	0	100.00	0.00	0.00
Private								
<2 year	Certificate	49	48	1	0	97.96	2.04	0.00
2-year	Certificate	73	70	3	0	95.89	4.11	0.00
	Post-Bacc Certificate	1	1	0	0	100.00	0.00	0.00
4-year	Certificate	91	88	1	2	96.70	1.10	2.20
	Post-Bacc Certificate	39	38	0	1	97.44	0.00	2.56
For-Profit								
<2 year	Certificate	1,100	919	153	28	83.55	13.91	2.55
	Associate's	5	4	1	0	80.00	20.00	0.00
	1st Professional Degree	4	4	0	0	100.00	0.00	0.00
2-year	Certificate	1,223	969	217	37	79.23	17.74	3.03
	Associate's	452	236	153	63	52.21	33.85	13.94
	Post-Bacc Certificate	2	2	0	0	100.00	0.00	0.00
4-year	Certificate	267	180	68	19	67.42	25.47	7.12
	Associate's	514	206	164	144	40.08	31.91	28.02
	Bachelor's	407	175	47	185	43.00	11.55	45.45
	Post-Bacc Certificate	8	8	0	0	100.00	0.00	0.00
	Master's	171	153	6	12	89.47	3.51	7.02
	Doctoral	30	26	2	2	86.67	6.67	6.67
	1st Professional Degree	10	2	1	7	20.00	10.00	70.00
	Total	5,539	4,219	819	501	76.17	14.79	9.04

Table 58: D/E Rates Results by Sector and Credential (5.42% Interest Rate, N-Size of 30, 20-Year Amortization

Sector & IHE Type	Credential Level	Programs	Pass	Zone	Fail	Pass%	Zone %	Fail %
Public								
<2 year	Certificate	157	157	0	0	100.00%	0.00%	0.00%
2-year	Certificate	824	824	0	0	100.00%	0.00%	0.00%
4-year	Certificate	86	86	0	0	100.00%	0.00%	0.00%
	Post-Bacc Certificate	26	26	0	0	100.00%	0.00%	0.00%
Private								
<2 year	Certificate	49	49	0	0	100.00%	0.00%	0.00%
2-year	Certificate	73	73	0	0	100.00%	0.00%	0.00%
	Post-Bacc Certificate	1	1	0	0	100.00%	0.00%	0.00%
4-year	Certificate	91	89	1	1	97.80%	1.10%	1.10%
	Post-Bacc Certificate	39	38	1	0	97.44%	2.56%	0.00%
For-Profit								
<2 year	Certificate	1,100	1,079	19	2	98.09%	1.73%	0.18%
	Associate's	5	5	0	0	100.00%	0.00%	0.00%
	1st Professional Degree	4	4	0	0	100.00%	0.00%	0.00%
2-year	Certificate	1,223	1,192	31	0	97.47%	2.53%	0.00%
	Associate's	452	398	44	10	88.05%	9.73%	2.21%
	Post-Bacc Certificate	2	2	0	0	100.00%	0.00%	0.00%
4-year	Certificate	267	250	16	1	93.63%	5.99%	0.37%
	Associate's	514	390	102	22	75.88%	19.84%	4.28%
	Bachelor's	407	230	72	105	56.51%	17.69%	25.80%
	Post-Bacc Certificate	8	8	0	0	100.00%	0.00%	0.00%
	Master's	171	159	4	8	92.98%	2.34%	4.68%
	Doctoral	30	28	2	0	93.33%	6.67%	0.00%
	1st Professional Degree	10	4	3	3	40.00%	30.00%	30.00%
Total		5,539	5,092	295	152	91.93%	5.33%	2.74%

D/E Rate Thresholds and the Zone

We also considered the related issues of the appropriate thresholds for the D/E rates measure and whether there should be a zone. The proposed regulations would establish stricter passing thresholds than the thresholds in the 2011 Prior Rule. The passing threshold for the discretionary income rate would be 20 percent instead of 30 percent, and the threshold for the annual earnings rate would be 8 percent instead of 12 percent. Additionally, the proposed regulations add a zone category for programs with a discretionary income rate greater than 20 percent but less than or equal to 30 percent or an annual earnings rate

greater than 8 percent but less than or equal to 12 percent.

The proposed passing thresholds for the discretionary income rate and the annual earnings rate are based upon mortgage industry practices and expert recommendations. The passing threshold for the discretionary income rate is set at 20 percent, based on research conducted by economists Sandy Baum and Saul Schwartz, which the Department previously considered in connection with the 2011 Prior Rule.[169] Specifically, Baum and Schwartz concluded that the debt payment-to-discretionary income ratio should never exceed 17 to 20 percent, and that ''there are virtually no circumstances under which higher debt service ratios would be reasonable.'' [170] The passing threshold of 8 percent for the annual earnings rate used in the proposed regulations has been a fairly common credit-underwriting standard. It is based on the recommendation made by many lenders that student and all other loan installments not exceed 8 percent of the borrower's pretax income so that the borrower has sufficient funds available to cover taxes, car payments, rent or mortgage payments, and household expenses. Indeed, other studies have also accepted the 8 percent standard, and some State agencies have established similar guidelines. These percentages are derived from home mortgage underwriting criteria where total household debt should not exceed 38 to 45 percent of pretax income, with 30 percent being available for housing-related debt.[171]

In the 2011 Prior Rule, the passing thresholds for the debt-to-earnings ratios were based on the same expert recommendations and industry practice, but were increased by 50 percent to 30 percent for the discretionary income rate and 12 percent for the annual earnings rate to identify the lowest-performing GE programs and to build in a tolerance. 76 FR 34400.

TABLE 59—D/E RATES MEASURE RESULTS FOR ALTERNATIVE THRESHOLDS

Result	12/30 no zone		8/20 w/zone	
	Programs	Enrollment	Programs	Enrollment
Pass	5,088	2,162,140	4,256	1,715,421
Zone	N/A	N/A	832	446,719
Fail	451	359,143	451	359,143
Total	5,539	2,521,283	5,539	2,521,283

Upon further consideration of this issue and analysis of the GE Data, we believe that the stated objectives of the 2011 Prior Rule to identify the worst performing programs and build a ''tolerance'' into the thresholds are better achieved by setting 30 percent for the discretionary income rate and 12 percent for the annual earnings rate as the upper boundaries for a zone rather than as the passing thresholds.

Estimated Effects of the D/E Rates Alternatives

In order to consider the alternatives for calculation of the D/E rates and to provide information to potential commenters, we estimated the impacts of the alternatives. The results are summarized in Table 42 and are the equivalent of the annualized costs and transfers in the Accounting Statement for the proposed regulations. To evaluate the alternatives, the same data, methods, and assumptions were used as for the estimates for the proposed regulations as described in ''Methodology for Costs, Benefits, and Transfers'' and the ''Net Budget Impacts'' sections of this regulatory impact analysis. The alternatives considered would result in different estimated distributions of enrollment in passing, zone, and failing programs under the proposed regulations, leading to the results in Table 42.

TABLE 60—ESTIMATED EFFECTS OF D/E RATES ALTERNATIVES

	N=10, 10–15–20 Amortization			
Estimates	Low Reaction		High Reaction	
Average Annual Student Transfers over 2017–2024		175,000		236,000
Average Annual Student Dropouts over 2017–2024		23,000		45,000
	3%	7%	3%	7%
Better return on money spent on education	Not Quantified		Not Quantified	
Additional expense of educating transfer students at passing programs	$164	$176	$223	$240
Transfer of Federal student aid money from failing programs to the Federal government when students drop out of programs	71	76	104	112
Estimated Transfer of revenues from non-passing programs to passing or zone programs as students transfer	1,373	1,468	1,864	2,002
Estimated Transfer of instructional expenses from non-passing programs to passing or zone programs as students transfer	670	716	909	976

[169] Baum, S., and Schwartz, S. (2003). How Much Debt is Too Much? Defining Benchmarks for Managing Student Debt.

[170] Id.

[171] Id.

	N=30, 10 Year Amortization for All Credentials			
Estimates	Low Reaction		High Reaction	
Average Annual Student Transfers over 2017–2024		175,000		236,000
Average Annual Student Dropouts over 2017–2024		23,000		45,000
	3%	7%	3%	7%
Better return on money spent on education	Not Quantified		Not Quantified	
Additional expense of educating transfer students at passing programs	$164	$176	$223	$240
Transfer of Federal student aid money from failing programs to the Federal government when students drop out of programs	71	76	104	112
Estimated Transfer of revenues from non-passing programs to passing or zone programs as students transfer	1,375	1,472	1,865	2,006
Estimated Transfer of instructional expenses from non-passing programs to passing or zone programs as students transfer	670	718	910	978

	N=30, 20 Year Amortization for All Credentials			
Estimates	Low Reaction		High Reaction	
Average Annual Student Transfers over 2017–2024		157,000		214,000
Average Annual Student Dropouts over 2017–2024		21,000		41,000
	3%	7%	3%	7%
Better return on money spent on education	Not Quantified		Not Quantified	
Additional expense of educating transfer students at passing programs	$147	$156	$201	$215
Transfer of Federal student aid money from failing programs to the Federal government when students drop out of programs	64	68	94	100
Estimated Transfer of revenues from non-passing programs to passing or zone programs as students transfer	1,227	1,302	1,675	1,785
Estimated Transfer of instructional expenses from non-passing programs to passing or zone programs as students transfer	598	635	817	870

Discretionary Income Rate

Instead of two debt-to-earnings ratios, the annual earnings rate and the discretionary income rate, we considered a simpler approach where only the discretionary income rate would be used as a metric. However, this would have led to any program with earnings below the discretionary income level failing the measure. Having a single discretionary income-based metric would essentially set a minimum earnings threshold for the proposed regulations, even if the debt for students completing the program was very low. Because of this, the Department retained the annual earnings rate metric of the 2011 Prior Rule. For programs with very low earnings but also very low debt, we believe that the transparency requirements are a more effective regulatory approach. With information about program outcomes available through the proposed disclosures, students would be able to make their own assessment of whether the potential earnings would meet their goals and expectations.

Pre-Post Earnings Comparison

The Department also considered an approach that would compare pre-program and post-program earnings to capture the near-term effect of the program. This approach had been suggested by commenters responding to the 2011 Prior Rule, especially for short-term programs, and has some merit conceptually. However, earnings immediately before enrollment may not be an accurate measure of an individual's baseline earning potential without the program. Pre-enrollment earnings are particularly unlikely to reflect earnings potential for dependent students, workers returning to school after becoming unemployed, or those using their training to switch fields. Moreover, such a measurement would not identify programs where large numbers of students are taking out debts they cannot afford to repay.

pCDR Thresholds

As described in ''§ 668.403 Gainful employment framework'' in *Significant Proposed Regulations,* we modeled pCDR on the cohort default rate metric that is currently used to determine institutional eligibility to participate in title IV, HEA programs. Thus, in addition to adopting the iCDR threshold under which an institution loses eligibility if it has three consecutive fiscal years of a pCDR of 30 percent or greater, we considered adopting the second threshold, which is that an institution loses eligibility if it has one year of an iCDR of 40 percent or greater. Of the 6,815 programs in the 2012 GE informational rates sample with pCDR data, 233 have a default rate of 40 percent or more. However, we do not believe that a measure that results in the loss of program eligibility after only a single year of failure is consistent with our overall approach to allow institutions time to improve their programs, particularly during the initial years of implementation of the regulations.

Negative Amortization

Another proposal the Department considered was a variation on a repayment metric that would compare the total amounts owed at the beginning and end of the calculation year for borrowers from a program who entered repayment in the two-year period, without regard to whether the borrower completed the program, to determine if

borrower payments reduced that balance over the course of the calculation year. Different variations of this measure were considered, including a comparison of total balances and a comparison of principal balances only. The measure would have been an additional metric that would have accounted for the performance of students who did not complete the program.

Ultimately, the Department decided not to propose negative amortization as an eligibility metric in the proposed regulations because we were unable to draw clear conclusions from the data available.

Programs With Low Rates of Borrowing

Several negotiators argued that low-cost, and consequently low-risk, programs where borrowing is largely unnecessary should not be subject to the D/E rates measure because the measure would not accurately reflect the level of borrowing by individuals enrolled in the program and the low cost of the program. The negotiators claimed that, for many low-cost programs, students receiving title IV, HEA program funds constitute only a small, unrepresentative portion of the students in terms of borrowing behavior. They argued that, for these programs, the percentage of students who receive title IV, HEA program funds and incur debt to enroll in the program is significantly greater than the percentage of all students who incur debt to enroll in the program. According to the negotiators, a program in which a majority of students have no debt is unlikely to produce graduates whose educational debts would be excessive because the tuition and costs are likely to be modest and require little borrowing, and therefore would not place the Federal investment in the program at significant risk. To more adequately account for low-cost, low-risk programs, the negotiators suggested that a GE program should pass the D/E rates measure if (1) the median loan debt of all individuals who complete the program in the applicable cohort period (both individuals who received, and who did not receive, title IV, HEA program funds) is zero, or (2) the program has a borrowing rate of less than 50 percent.

A program with a borrowing rate of less than 50 percent may not, in fact, be low risk. For example, the majority of students could have alternative resources to pay the program costs, such as employers, State grant programs, or military benefits, or the program could still have a significant number of students who received title IV, HEA program loans for enrollment in the program. Accordingly, rather than adopting a broad approach that would apply to all programs and could commonly lead to inaccurate determinations as to whether a program is low risk to students and taxpayers, the proposed regulations reserve such an inquiry to situations where a program is failing or in the zone under the D/E rates measure. The proposed regulations would permit an institution to demonstrate that a program with D/E rates that are failing or in the zone should instead be deemed to be passing the D/E rates measure because less than 50 percent of all individuals who completed the program, both those who received title IV, HEA program funds, and those who did not, had to assume any debt to enroll in the program.

Enrollment Limits and Borrower Protections

During the negotiated rulemaking sessions members of the negotiated rulemaking committee raised proposals to create borrower relief provisions for students in programs that fail the GE measures and to place additional restrictions on those program. The Department had proposed, for a program that does not pass the GE measures and is in jeopardy of losing its eligibility for title IV, HEA program funds, in addition to the student warning requirement, limits on the number of students eligible for title IV, HEA program funds who could be enrolled in the program. In response to the negotiators' concerns, the Department also proposed, in those circumstances, to require institutions to make arrangements to reduce student debt. We have not included these additional consequences in the proposed regulations.

We have not included enrollment limits in the proposed regulations as we believe that providing warnings to students and prospective students about potentially ineligible programs, along with the information that would be available through the required disclosures, provide meaningful protections and will sufficiently enable students and their families to make informed decisions about their educational investment. However, we invite comment on whether enrollment limits should be imposed on programs that could become ineligible and how those limits could be practically implemented.

We developed our debt reduction proposal in response to suggestions from negotiators representing consumer advocates and students. These negotiators argued that, while a failing or zone program would be allowed several years to pass the GE measures before becoming ineligible, students would continue to borrow to attend a program that the Department, based on the proposed regulations, may not reasonably expect would lead to gainful employment. Moreover, in the event a program lost eligibility under the GE measures, enrolled students would still be responsible for the debt they accumulated despite the fact they could not complete a program identified by the Department as failing the performance metrics.

To address this, the negotiators argued that the Department should provide loan discharges under section 437(c) of the HEA to students who borrowed for attending a program that loses eligibility under the GE measures. They contended that these borrowers would also have claims against the institution for enrolling them in a program that was offered as an eligible program, but that in fact did not meet the eligibility requirements proposed in the regulations. They observed that Federal regulations implementing section 455(h) of the HEA, 20 U.S.C. 1087e(h), allow a Direct Loan borrower to assert, as a defense to loan repayment, any claim that the borrower has against the institution, and that this existing regulation would apply to the case of a program that did not meet the standards of the proposed regulations. 34 CFR 685.206(c).[172] These negotiators further urged the Department to formally adopt, as a defense to loan repayment, a program's failure to pass the GE measures, whether or not the program eventually lost eligibility. Additionally, the negotiators suggested a variety of other remedies, including requiring institutions to refund tuition paid for a program that loses eligibility, requiring institutions to post a surety bond or letter of credit when a program receives a zone or failing result in order to provide for relief in the event that the program later becomes ineligible, and requiring all institutions intending to offer a GE program to contribute to a ''common pool'' fund to be administered by the Department that would be used to provide debt relief to students affected by a program's loss of eligibility.

One of the non-Federal negotiators submitted a proposal that would allow a program that did not pass the GE

[172] In response to these objections, we noted that the Department had already expressly interpreted section 437(c) of the HEA in controlling regulations to provide no relief for a claim that the loan was arranged for enrollment in an institution that was ineligible, or that the institution arranged the loan for enrollment in an ''ineligible program.'' 34 CFR 682.402(e); 59 FR 22470 (April 29, 1994), 59 FR 2490 (Jan. 14, 1994).

measures to remain eligible if the institution implemented a debt reduction plan that would reduce borrowing to levels that would meet the GE measures.

In response, at the second and third negotiating sessions, we drew on the negotiator proposals and presented regulatory provisions that would have required an institution with a program that could lose eligibility the following year to make sufficient funds available to enable the Department, if the program became ineligible, to reduce the debt burden of students who attended the program during that year. The amount of funds would have been approximately the amount needed to reduce the debt burden of students to the level necessary for the program to pass the GE measures. If the program were to lose eligibility, the Department would use the funds provided by the institution to pay down the loans of students who were enrolled at that time or who attended the program during the following year. We also included provisions that would allow an institution, during the transition period, to avoid these requirements by offering to every enrolled student for the duration of their program, and every student who subsequently enrolled while the program's eligibility remained in jeopardy, institutional grants in the amounts necessary to reduce loan debt to a level that would result in the program passing the GE measures. If an institution took advantage of this option, a program that would otherwise lose eligibility would avoid that consequence during the transition period.

Negotiators voiced numerous concerns about the proposed borrower relief provisions. These included whether the proposals would be sufficient to compensate students for enrolling in an ineligible program, what cohort of students would receive relief, the extent of the relief to be provided, how any monetary amounts would be calculated, and costs that would be incurred by institutions in providing relief. The nature of these discussions made clear that these are very complex issues that warrant further exploration. Accordingly, we are not including proposed language regarding borrower relief in the regulations and request comment on these issues, including other options that the Department could consider to address borrower relief concerns.

Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis presents an estimate of the effect on small entities of the proposed regulations. The U.S. Small Business Administration Size Standards define ''for-profit institutions'' as ''small businesses'' if they are independently owned and operated and not dominant in their field of operation with total annual revenue below $7,000,000, and defines ''non-profit institutions'' as small organizations if they are independently owned and operated and not dominant in their field of operation, or as small entities if they are institutions controlled by governmental entities with populations below 50,000. The Secretary invites comments from small entities as to whether they believe the proposed changes would have a significant economic impact on them and, if so, requests evidence to support that belief.

Description of the Reasons That Action by the Agency Is Being Considered

The Secretary is creating through the proposed regulations a definition of gainful employment in a recognized occupation by establishing what we consider, for purposes of meeting the requirements of section 102 of the HEA, to be a reasonable relationship between the loan debt incurred by students in a training program and income earned from employment after the student completes the training. The proposed regulations also assess the default experience of students who borrowed title IV, HEA program funds to attend a program.

As described in this regulatory impact analysis, the trends in graduates' earnings, student loan debt, defaults, and repayment underscore the need for the Department to act. The gainful employment accountability framework takes into consideration the relationship between total student loan debt and earnings after completion of a postsecondary program and the default experience of students who borrow title IV, HEA program loans regardless of whether they complete a program.

Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Regulations

As discussed in connection with the 2011 Prior Rule, the proposed regulations are intended to address growing concerns about high levels of loan debt for students enrolled in postsecondary programs that presumptively provide training that leads to gainful employment in a recognized occupation. 76 FR 76 FR 34498. The HEA applies different criteria for determining the eligibility of programs and institutions for title IV, HEA program funds. Id. In the case of shorter programs and programs of any length at for-profit institutions, eligibility is restricted to programs that ''prepare students for gainful employment in a recognized occupation.'' Generally, the HEA does not require degree programs greater than one year in length at public and non-profit institutions to meet this gainful employment requirement in order to be eligible for title IV, HEA program funds. Id. This difference in eligibility is longstanding and has been retained through many amendments to the HEA. Id. As recently as the HEOA, Congress again adopted the distinct treatment of for-profit institutions while adding an exception for certain liberal arts baccalaureate programs at some for-profit institutions. Id.

Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Regulations Would Apply

The proposed regulations would apply to programs eligible for title IV, HEA program funds because they prepare students for gainful employment in a recognized occupation. The Department estimates that approximately 6,842 programs offered by small entities could be subject to the proposed regulations, of which 2,555 would be evaluated under at least one GE measure. As stated in connection with the 2011 Prior Rule, given that the category of small entities includes some private non-profit institutions regardless of revenues, a wide range of small entities would be covered by the proposed regulations. 76 FR 34498. This continues to be true today, and the entities may include institutions with multiple programs, a few of which are covered by the proposed regulations, to single-program institutions with well-established ties to a local employer base. Id. Many of the programs that would be subject to the proposed regulations are offered by for-profit institutions and public and private non-profit institutions with programs less than two years in length. Id.

The structure of the proposed regulations and the proposed n-size provisions reduce the effect of the proposed regulations on small entities but complicate the analysis. As discussed in connection with the 2011 Prior Rule, the proposed regulations provide for the evaluation of individual GE programs offered by postsecondary institutions, but these programs are administered by the institution, either at the branch level or on a system-wide basis. 76 FR 34498. Many institutions continue to have programs that would be considered small, but the

classification for this analysis is at the institutional level, as a program that is determined ineligible under the proposed regulations could affect the institution's ability to operate. Id. Table 61 demonstrates that many small entities offer a limited number of GE programs and the number of small entities that would have at least 50 percent of their programs become failing or in the zone. With a high percentage of programs that are failing or in the zone, the loss of title IV, HEA program eligibility for any program would be more likely to cause the institution to shut down than would be the case for larger entities with multiple programs.

TABLE 61—DISTRIBUTION AND GE MEASURE PERFORMANCE OF SMALL ENTITIES BY NUMBER OF PROGRAMS

Number per small entity	Number of small entities	Number of small entities with more than 50% failing	Number of small entities with more than 50% zone or failing
1	737	95	95
2	232	31	31
3	74	5	5
4	47	4	4
5	22	3	3
6	20	7	7
7	8	2	2
8	4	0	0
9	4	0	0
10	2	0	0
11	1	0	0
12	1	0	0
15	1	0	0
22	1	0	0

While private non-profit institutions are classified as small entities, our estimates indicate that no more than 2 percent of programs at those institutions are likely to fail either of the GE measures, with an even smaller percentage likely to be found ineligible. As noted in connection with the 2011 Prior Rule, the governmental entities controlling public sector institutions are not expected to fall below the 50,000 threshold for small status under the Small Business Administration's Size Standards, but, even if they do, programs at public sector institutions are highly unlikely to fail the GE measures. 76 FR 34500. This continues to hold true; therefore, our analysis of the effects on small entities focuses on the for-profit sector. The percentage of programs subject to evaluation in the for-profit sector likely to fail the GE measures is 23.4 percent for four-year institutions, 19.8 percent for two-year institutions, and 14.0 percent for less-than-two-year institutions. When modeled using the small entities only, those percentages are 34.6 percent, 12.4 percent, and 10.7 percent, respectively.

Table 62: Performance on GE Measures by Programs at Small Entities

Sector	IHE Type	Program Count				t4 Enrollment			
		Total	Pass	Zone	Fail	Total	Pass	Zone	Fail
Priv	<2 yr	54	45	1	8	9796	8172	396	1228
	2-yr	87	82	2	3	10,969	9391	1304	274
	4-yr	204	185	1	18	31,540	28,095	110	3335
For-profit	<2 yr	894	705	93	96	113,641	80,172	18,667	14,802
	2-yr	696	538	72	86	61,077	43,064	9723	8290
	4-yr	110	66	6	38	9538	5998	466	3074
Total		2045	1621	175	249	236,561	174,892	30,666	31,003

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Regulations, Including an Estimate of the Classes of Small Entities That Would Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

Table 63 relates the estimated burden of each information collection requirement to the hours and costs estimated in *Paperwork Reduction Act of 1995.* This additional workload is discussed in more detail under *Paperwork Reduction Act of 1995.* Additional workload would normally be expected to result in estimated costs associated with either the hiring of additional employees or opportunity costs related to the reassignment of existing staff from other activities. In total, these changes are estimated to increase burden on small entities participating in the title IV, HEA programs by 1,651,551 hours in the initial year of reporting. The monetized cost of this additional burden on institutions, using wage data developed using BLS data available at *www.bls.gov/ncs/ect/sp/ecsuphst.pdf*, is $60,364,201. In subsequent years, this burden would be reduced as institutions would only be reporting for a single year and we would expect the annual cost to be approximately $10 million. This cost was based on an hourly rate of $36.55.

TABLE 63—PAPERWORK REDUCTION ACT

Provision	Reg section	OMB Control No.	Hours	Costs
Issuing and Challenging D/E Rates	668.405	OMB—NEW1	85,094	3,110,175
D/E Rates Appeals	668.406	OMB—NEW2	11,677	426,779
Consequences of GE Measures	668.41	OMB—NEW1	427,091	15,610,175
Reporting Requirements of GE Programs	668.411	OMB—NEW1	202,336	7,395,398
Disclosure Requirements for GE Programs	668.412	OMB—NEW1	748,282	27,349,710
Calculating, Issuing, and Challenging Completion, Withdrawal, and Repayment Rates.	668.413	OMB—NEW1	174,126	6,364,305
Certification and Application Requirement for GE Programs	668.414	OMB—NEW1	665	24,323
Draft Program Cohort Default Rates and Challenges	668.504	OMB—NEW3	2,055	75,115
Program CDR—Uncorrected Data Adjustments	668.509	OMB—NEW3	129	4,726
Program CDR—New Data Adjustments	668.51	OMB—NEW3	31	1,143
Program CDR-Erroneous Data Appeals	668.511	OMB—NEW3	0	0
Program CDR—Loan Servicing Appeals	668.512	OMB—NEW3	45	1,649
Program CDR—Economically Disadvantaged Appeals	668.513	OMB—NEW3	16	586
Program CDR—Participation Rate Index Appeals	668.514	OMB—NEW3	3	117
Total			1,651,551	60,364,201

Identification, to the Extent Practicable, of All Relevant Federal Regulations That May Duplicate, Overlap, or Conflict With the Proposed Regulations

The proposed regulations are unlikely to conflict with or duplicate existing Federal regulations. Under existing law and regulations, institutions are required to disclose data in a number of areas related to the proposed regulations.

Alternatives Considered

As previously described, we evaluated the proposed regulations for their effect on different types of institutions, including the small entities that comprise approximately 60 percent of institutions that would be subject to the proposed regulations. As discussed in ''Regulatory Alternatives Considered,'' several different approaches were analyzed, including the use of different interest rates and amortization periods, placement rates, pre- and post-program earnings comparison, and different n-size for programs to be evaluated. These alternatives are not specifically targeted at small entities, but the n-size provision may have a larger effect on programs at small entities.

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FEDERAL REGISTER

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Part III

The President

Executive Order 13663—Establishing an Emergency Board to Investigate Disputes Between the Long Island Rail Road Company and Certain of Its Employees Represented by Certain Labor Organizations

Federal Register
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Tuesday, March 25, 2014

Presidential Documents

Title 3—

The President

Executive Order 13663 of March 20, 2014

Establishing an Emergency Board to Investigate Disputes Between the Long Island Rail Road Company and Certain of Its Employees Represented by Certain Labor Organizations

Disputes exist between the Long Island Rail Road Company and certain of its employees represented by certain labor organizations. The labor organizations involved in these disputes are designated on the attached list, which is made part of this order.

The disputes heretofore have not been adjusted under the provisions of the Railway Labor Act, as amended, 45 U.S.C. 151–188 (RLA).

A first emergency board to investigate and report on the disputes was established on November 22, 2013, by Executive Order 13654 of November 21, 2013. The emergency board terminated upon issuance of its report. Subsequently, its recommendations were not accepted by the parties.

A party empowered by the RLA has requested that the President establish a second emergency board pursuant to section 9A of the RLA (45 U.S.C. 159a).

Section 9A(e) of the RLA provides that the President, upon such request, shall appoint a second emergency board to investigate and report on the disputes.

NOW, THEREFORE, by the authority vested in me as President by the Constitution and the laws of the United States, including section 9A of the RLA, it is hereby ordered as follows:

Section 1. *Establishment of Emergency Board (Board).* There is established, effective 12:01 a.m. eastern daylight time on March 22, 2014, a Board of three members to be appointed by the President to investigate and report on these disputes. No member shall be pecuniarily or otherwise interested in any organization of railroad employees or any carrier. The Board shall perform its functions subject to the availability of funds.

Sec. 2. *Report.* Within 30 days after the creation of the Board, the parties to the disputes shall submit to the Board final offers for settlement of the disputes. Within 30 days after the submission of final offers for settlement of the disputes, the Board shall submit a report to the President setting forth its selection of the most reasonable offer.

Sec. 3. *Maintaining Conditions.* As provided by section 9A(h) of the RLA, from the time a request to establish a second emergency board is made until 60 days after the Board submits its report to the President, no change in the conditions out of which the disputes arose shall be made by the parties to the controversy, except by agreement of the parties.

Sec. 4. *Records Maintenance.* The records and files of the Board are records of the Office of the President and upon the Board's termination shall be maintained in the physical custody of the National Mediation Board.

Sec. 5. *Expiration.* The Board shall terminate upon the submission of the report provided for in section 2 of this order.

THE WHITE HOUSE,
March 20, 2014.

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LABOR ORGANIZATIONS

Brotherhood of Railroad Signalmen
Independent Railway Supervisors Association International
International Association of Machinists & Aerospace Workers
National Conference of Firemen & Oilers/Service Employees International Union
International Brotherhood of Electrical Workers
Transportation Communications International Union
International Association of Sheet Metal, Air, Rail and Transportation Workers

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