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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Doc. No. AMS–FV–13–0087; FV14–985–1A IR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 1 (Scotch) Spearmint Oil for the 2014–2015 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule revises the quantity of Class 1 (Scotch) spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2014–2015 marketing year under the Far West spearmint oil marketing order. This rule increases the Scotch spearmint oil salable quantity from 1,149,030 pounds to 1,984,423 pounds and the allotment percentage from 55 percent to 95 percent. The marketing order regulates the handling of spearmint oil produced in the Far West and is administered locally by the Spearmint Oil Administrative Committee (Committee). The Committee recommended this rule for the purpose of maintaining orderly marketing conditions in the Far West spearmint oil market.

DATES: Effective October 31, 2014 and applicable to the 2014–2015 marketing year; comments received by December 30, 2014 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Senior Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *Barry.Broadbent@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This interim rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule increases the quantity of Scotch spearmint oil produced in the Far West that handlers may purchase from, or handle on behalf of, producers during the 2014–2015 marketing year, which began on June 1, 2014, and ends on May 31, 2015.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule revises the quantity of Scotch spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2014–2015 marketing year under the Far West spearmint oil marketing order. This rule increases the Scotch spearmint oil salable quantity from 1,149,030 pounds to 1,984,423 pounds and the allotment percentage from 55 percent to 95 percent.

Under the volume regulation provisions of the order, the Committee meets each year to adopt a marketing policy for the ensuing year. When the Committee's marketing policy considerations indicate a need for limiting the quantity of spearmint oil available to the market to establish or maintain orderly marketing conditions, the Committee submits a recommendation to the Secretary for volume regulation.

Volume regulation under the order is effectuated through the establishment of a salable quantity and allotment percentage applicable to each class of spearmint oil handled in the production area during a marketing year. The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle on behalf of, producers during a given marketing year. The allotment percentage for each

class of oil is derived by dividing the salable quantity by the total industry allotment base for that same class of oil. The total industry allotment base is the aggregate of all allotment base held individually by producers. Producer allotment base is the quantity of each class of spearmint oil that the Committee has determined is representative of a producer's spearmint oil production. Each producer is allotted a pro rata share of the total salable quantity of each class of spearmint oil each marketing year. Each producer's annual allotment is determined by applying the allotment percentage to the producer's individual allotment base for each applicable class of spearmint oil.

The full Committee met on November 6, 2013, to consider its marketing policy for the ensuing year. At that meeting, the Committee determined that marketing conditions indicated a need for volume regulation of both classes of spearmint oil for the 2014–2015 marketing year. The Committee recommended salable quantities of 1,149,030 pounds and 1,090,821 pounds, and allotment percentages of 55 percent and 46 percent, respectively, for Scotch and Native spearmint oil. A proposed rule to that effect was published in the **Federal Register** on March 14, 2014 (79 FR 14441). Comments on the proposed rule were solicited from interested persons until March 31, 2014. No comments were received. Subsequently, a final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oil for the 2014–2015 marketing year was published in the **Federal Register** on May 8, 2014 (79 FR 26359).

Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, the full eight member Committee met again on September 11, 2014, to consider pertinent market information on the current supply, demand, and price of spearmint oil. After some deliberation, the Committee recommended increasing the 2014–2015 marketing year Scotch spearmint oil salable quantity from 1,149,030 pounds to 1,984,423 pounds and the allotment percentage from 55 percent to 95 percent. The motion to increase the salable quantity and allotment percentage for Scotch passed with six members in favor and one member opposed. The public member, while present, abstained from the vote. The member opposed to the motion agreed with the other members of the Committee that an increase in the salable quantity and allotment percentage was necessary for the industry to respond to increasing demand. However, he cast his vote against the motion based on his opinion that an 835,393 pound increase in the salable quantity, and a corresponding 40 percent increase in the allotment percentage, was too large of an increase this early in the marketing year. The member felt that it would be better to be conservative at this point in the marketing year, given that the Committee had the ability to further increase the volume control provisions later if marketing conditions warranted.

Thus, taking into consideration the following discussion, this rule makes additional amounts of Scotch spearmint oil available to the market by increasing the salable quantity and allotment percentage. This rule increases the 2014–2015 marketing year Scotch spearmint oil salable quantity from 1,149,030 pounds to 1,984,423 pounds and raises the allotment percentage from 55 percent to 95 percent. Such additional oil may come from excess Scotch spearmint oil produced in the current marketing year or by releasing Scotch spearmint oil held in the reserve pool. As of May 31, 2014, the Committee records show that the Scotch spearmint oil reserve pool contained just 551 pounds of oil. In addition, the Committee estimates that producers have produced 222,544 pounds of Scotch spearmint oil production in excess of their annual allotments for the 2014–2015 marketing year.

The increase in the salable quantity as a result of this rule represents an additional 835,393 pounds of Scotch spearmint oil being made available to the market. However, due to the limited amount of Scotch spearmint oil held by individual producers (oil produced in the current year or held in reserve from past years production), the Committee expects that only 211,877 pounds of additional Scotch spearmint oil will actually be made available to the spearmint oil market. The relatively high salable quantity resulting from this action, as compared to the actual quantity of spearmint oil that will be made available to the market, is necessary to ensure that those producers that have Scotch spearmint oil in inventory have enough annual allotment to be able to market that oil. Producers that do not have additional Scotch spearmint oil in inventory (either oil held in the reserve pool or from excess production in the current year) will not be able to utilize the additional annual allotment issued to them as a result of this action and the additional annual allotment will go unused.

The 2014–2015 marketing year began on June 1, 2014, with an estimated carry-in of 7,064 pounds of salable Scotch spearmint oil. When the estimated carry-in is added to the 2014–2015 salable quantity of 1,149,030 pounds initially established for Scotch spearmint oil, the result is a total available supply for the 2014–2015 marketing year of 1,156,094 pounds. However, the Committee estimates that some Scotch spearmint oil producers do not have sufficient production from the 2014 crop to fill approximately 190,174 pounds of their respective 2014–2015 marketing year annual allotment. As such, the Committee estimates that the total actual supply of Scotch spearmint oil available to the market prior to the issuance of this rule is 965,920 pounds, not the 1,156,094 pounds as originally estimated. Of this amount, the Committee estimates that 927,675 pounds of Scotch spearmint oil have already been sold or have been committed to be sold as of the September 11, 2014, meeting date. This leaves just 38,245 pounds of uncommitted salable Scotch spearmint oil actually available for sale for the remainder of the 2014–2015 marketing year. The Committee believes that maintaining such a small amount of salable Scotch spearmint oil would be detrimental to the industry.

In making the recommendation to increase the salable quantity and allotment percentage of Scotch spearmint oil, the Committee considered all currently available information on the price, supply, and demand of spearmint oil. The Committee also considered reports and other information from handlers and producers in attendance at the meeting. Lastly, the Committee manager presented information and reports that were provided to the Committee staff by handlers and producers who were not in attendance at the September 11, 2014, meeting.

This action increases the 2014–2015 marketing year Scotch spearmint oil salable quantity by 835,393 pounds, to a total of 1,984,423 pounds. However, as mentioned previously, the net effect of the increase will be much less than the calculated increase due to the amount of actual oil individual producers have available to market from the current year's excess production and from reserve pool inventory. The Committee estimates that this action will actually make an additional 211,877 pounds of Scotch spearmint oil available to the market. That amount, combined with the 38,245 pounds of salable Scotch spearmint oil currently available, will make a total of 250,122 pounds that may be marketed through the remainder of the marketing year. The total supply of Scotch spearmint oil that is anticipated

to be available to the market will be increased to 1,177,797 pounds. Actual sales of Scotch spearmint oil for the 2013–2014 marketing year totaled 1,065,725 pounds.

The Committee estimates that this action will completely deplete reserve pool stocks of Scotch spearmint oil during the course of the 2014–2015 marketing year. In addition, the Committee estimates that all but 11,218 pounds of the current year's Scotch spearmint oil production will be available to enter the market. While these inventory levels are low, the Committee believes that trying to hold any Scotch spearmint oil in reserve under the current market conditions could result in the market experiencing a shortage of Scotch spearmint oil during the course of the 2014–2015 marketing year. Further, the Committee expects the Scotch spearmint oil industry to respond to the current market conditions with increased production in the coming years, and that Scotch spearmint oil inventory levels will quickly return to normal levels.

When the original 2014–2015 marketing policy statement was drafted, handlers estimated the demand for Scotch spearmint oil for the 2014–2015 marketing year to be 1,000,000 pounds. The Committee's initial recommendation for the establishment of the Scotch spearmint oil salable quantity and allotment percentage for the 2014–2015 marketing year was based on that estimate and did not anticipate the increase in demand for Scotch spearmint oil that the market is currently experiencing. Handlers now estimate that Scotch spearmint oil demand for the 2014–2015 marketing year could be as much as 1,100,000 to 1,200,000 pounds. As such, the Committee believes that the supply of Scotch spearmint oil available to the market under the initially established salable quantity and allotment percentage is insufficient to satisfy the current level of demand for oil at reasonable price levels. The Committee further believes that the increase in the salable quantity and allotment percentage effectuated by this action is vital to ensuring an adequate supply of Scotch spearmint oil is available to the market moving forward.

As previously stated, this action will make nearly all of the Scotch spearmint oil held by the industry available to the market. However, to achieve that desired net effect under the current supply conditions in the industry, it is necessary for the salable quantity and allotment percentage established under the volume regulation provisions of the order to be set at historically high levels. The Committee records show that very few producers hold Scotch spearmint oil in reserve. In addition, not every producer produced Scotch spearmint oil in excess of his/her annual allotment. Given the process by which volume regulation is effectuated under the order, those producers with large amounts of excess Scotch spearmint oil production are only able to market their entire inventory of Scotch spearmint oil when the allotment percentage is set very high. Likewise, producers that do not have excess Scotch spearmint oil production from the current year, or reserve oil from previous years, will not have any Scotch spearmint oil inventory to market, regardless of the level of increase in the allotment percentage. As such, the Committee expects that establishing a high salable quantity and allotment percentage for Scotch spearmint oil will translate into a large amount of the increased salable quantity going unused, as a number of producers have little or no Scotch spearmint oil available to sell.

As an example, assume Producer A has 2,000 pounds of Scotch spearmint oil allotment base. In addition, assume that during the 2014–2015 marketing year Producer A produced 1,900 pounds of Scotch spearmint oil. Producer A currently holds no Scotch spearmint oil in reserve from production in prior years. Given that the initial 2014–2015 marketing year allotment percentage was established at 55 percent, Producer A would be able to market 1,100 pounds of the current year production (55 percent allotment percentage × 2,000 pounds of allotment base), leaving the producer with 800 pounds of excess production that was initially not available to market. Without an increase in the allotment percentage, the producer would not be able to market any of the 800 pounds of excess oil produced and the oil would be placed in the reserve pool for marketing in subsequent years. For Producer A to market all 1,900 pounds of his/her current year Scotch spearmint oil production, the allotment percentage would need to be increased by 40 percent to a total of 95 percent (95 percent × 2,000 pounds = 1,900 pounds). An increase in the allotment percentage of anything less than 40 percent would fail to release all of the Scotch spearmint oil that the producer produced in the current year.

In contrast, assume that another producer, Producer B, likewise has 2,000 pounds of Scotch spearmint oil allotment base, but produced just 1,100 pounds of Scotch spearmint oil during the 2014–2015 marketing year. Producer B also has no oil held in reserve. As in the first case, Producer B would be able to market all of his/her current year production under the initial allotment percentage of 55 percent. However, a subsequent increase in the allotment percentage of 40 percent would have no impact on Producer B, as the producer has no excess Scotch spearmint oil production or reserve pool oil available to deliver to the market. As a result, the 800 pounds of additional annual allotment allocated to Producer B after a 40 percent increase in the allotment percentage would go unfilled.

The Committee estimates that a 40 percent increase in the salable quantity and allotment percentage is required to make all of the Scotch spearmint oil reserve pool, and most of the 2014 crop year excess Scotch spearmint oil production, available to the market. As mentioned previously, the Committee estimates that producers hold just 551 pounds of Scotch spearmint oil in the reserve pool that could enter the market under the increase. As such, the Committee believes that the majority of the Scotch spearmint oil that may be released to the market as a result of this action will come from the estimated 222,544 pounds of 2014 crop year production that is in excess of the producer's annual allotments. The Committee expects that all but approximately 11,218 pounds of Scotch spearmint oil will be available after the 40 percent increase in salable quantity and allotment percentage. By the Committee's calculation, the salable quantity would need to be increased by 5,431,052 pounds and the allotment percentage increased by 260 percent for the last 11,218 pounds of the Scotch spearmint oil to be released to the market under the volume control provisions of the order. It is anticipated that the 11,218 pounds of Scotch spearmint oil will be available to the market at the beginning of the 2015–2016 marketing year on June 1, 2015.

The Committee acknowledges that the high salable quantity, and the corresponding high allotment percentage, will create a large quantity of available Scotch spearmint oil for which no Scotch spearmint oil actually exists. Accordingly, the Committee expects that 623,516 pounds of the recommended 835,393 pound increase in salable quantity will go unfilled. The potentially large underutilized salable quantity has been factored into the Committee's recommendation.

The Committee's stated intent in the use of marketing order volume control regulation is to keep adequate supplies available to meet market needs and to maintain orderly marketing conditions.

With that in mind, the Committee developed its recommendation for increasing the Scotch spearmint oil salable quantity and allotment percentage for the 2014–2015 marketing year based on the information discussed above, as well as the summary data outlined below.

(A) Estimated 2014–2015 Scotch Allotment Base—2,089,146 pounds. This is the estimate on which the original 2014–2015 salable quantity and allotment percentage was based.

(B) Revised 2014–2015 Scotch Allotment Base—2,088,866 pounds. This is 280 pounds less than the estimated allotment base of 2,089,146 pounds. The difference is the result of annual adjustments made to the allotment base according to the provisions of the order.

(C) Original 2014–2015 Scotch Allotment Percentage—55 percent. This was unanimously recommended by the Committee on November 6, 2013.

(D) Original 2014–2015 Scotch Salable Quantity—1,149,030 pounds. This figure is 55 percent of the original estimated 2014–2015 allotment base of 2,089,146 pounds.

(E) Adjusted 2014–2015 Scotch Salable Quantity—1,148,898 pounds. This figure reflects the salable quantity actually available at the beginning of the 2014–2015 marketing year. This quantity is derived by applying the 55 percent allotment percentage to the revised allotment base of 2,088,866.

(F) Current Revision to the 2014–2015 Scotch Salable Quantity and Allotment Percentage:

(1) Increase in Scotch Allotment Percentage—40 percent. The Committee recommended a 40 percent increase at its September 11, 2014, meeting.

(2) 2014–2015 Scotch Allotment Percentage—95 percent. This figure is derived by adding the increase of 40 percent to the original 2014–2015 allotment percentage of 55 percent.

(3) Calculated Revised 2014–2015 Scotch Salable Quantity—1,984,423 pounds. This figure is 95 percent of the revised 2014–2015 allotment base of 2,088,866 pounds.

(4) Computed Increase in the 2014–2015 Scotch Salable Quantity—835,546 pounds. This figure is 40 percent of the revised 2014–2015 allotment base of 2,088,866 pounds.

(5) Expected Actual Increase in the 2014–2015 Scotch Spearmint Oil Available to the Market—211,877 pounds. This figure is based on the Committee's estimation of oil actually held by producers that may enter the market as a result of this rule.

Native spearmint oil is also regulated by the order. As mentioned previously, a salable quantity and allotment percentage for Native spearmint oil was established in a final rule published in the **Federal Register** on May 8, 2014 (79 FR 26359). At the September 11, 2014, meeting, the Committee considered the current production, inventory, and marketing conditions for Native spearmint oil. After receiving reports from the Committee staff and comments from the industry, the consensus of the Committee was that the previously established salable quantity and allotment percentage for Native spearmint oil was appropriate for the current market conditions. As such, the Committee took no action with regards to Native spearmint oil.

This rule relaxes the regulation of Scotch spearmint oil and will allow producers to meet market demand while improving producer returns. In conjunction with the issuance of this rule, the Committee's revised marketing policy statement for the 2014–2015 marketing year has been reviewed by USDA. The Committee's marketing policy statement, a requirement whenever the Committee recommends implementing volume regulations or recommends revisions to existing volume regulations, meets the intent of § 985.50 of the order. During its discussion of revising the 2014–2015 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) the prospective production of each class of oil; (4) the total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with USDA's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' has also been reviewed and confirmed.

The increase in the Scotch spearmint oil salable quantity and allotment percentage allows for anticipated market needs for that class of oil. In determining anticipated market needs, the Committee considered changes and trends in historical sales, production, and demand.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 8 spearmint oil handlers subject to regulation under the order, and approximately 39 producers of Scotch spearmint oil and approximately 91 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

Based on the SBA's definition of small entities, the Committee estimates that only two of the eight handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 22 of the 39 Scotch spearmint oil producers and 29 of the 91 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, the majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The use of volume control regulation allows the spearmint oil industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. Without volume control regulation, the supply and price of spearmint oil would likely fluctuate widely. Periods of oversupply could result in low producer prices and a large volume of oil stored and carried over to future crop years. Periods of undersupply could lead to excessive price spikes and could drive end users to source flavoring needs from other markets, potentially causing long-term economic damage to the domestic spearmint oil industry. The marketing order's volume control provisions have been successfully implemented in the domestic spearmint oil industry since 1980 and provide benefits for producers,

handlers, manufacturers, and consumers.

This rule increases the quantity of Scotch spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2014–2015 marketing year, which ends on May 31, 2015. The 2014–2015 Scotch spearmint oil salable quantity was initially established at 1,149,030 pounds and the allotment percentage initially set at 55 percent. This rule increases the Scotch spearmint oil salable quantity to 1,984,423 pounds and the allotment percentage from 55 percent to 95 percent.

Based on the information and projections available at the September 11, 2014, meeting, the Committee considered a number of alternatives to this increase. The Committee not only considered leaving the salable quantity and allotment percentage unchanged, but also considered other potential levels of increase. The Committee reached its recommendation to increase the salable quantity and allotment percentage for Scotch spearmint oil after careful consideration of all available information and input from all interested industry participants, and believes that the levels recommended will achieve the objectives sought. Without the increase, the Committee believes the industry would not be able to satisfactorily meet market demand.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178, Vegetable and Specialty Crop Marketing Orders. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the spearmint oil industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the September 11, 2014, meeting was a public meeting, and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on a change to the salable quantity and allotment percentage for Scotch spearmint oil for the 2014–2015 marketing year. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule increases the quantity of Scotch spearmint oil that may be marketed during the marketing year, which ends on May 31, 2015; (2) the current quantity of Scotch spearmint oil may be inadequate to meet demand for the 2014–2015 marketing year, thus making the additional oil available as soon as is practicable will be beneficial to both handlers and producers; (3) the Committee recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period, and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 985.233, remove the note preceding the section that states ''[Note: This section will not appear in the annual Code of Federal Regulations.]'' and revise paragraph (a) to read as follows:

§ 985.233 Salable quantities and allotment percentages—2014–2015 marketing year.

* * * * *

(a) Class 1 (Scotch) oil—a salable quantity of 1,984,423 pounds and an allotment percentage of 95 percent.

* * * * *

Dated: October 23, 2014.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2014–25646 Filed 10–30–14; 8:45 am]

BILLING CODE P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 907

FEDERAL HOUSING FINANCE AGENCY

12 CFR Parts 1201 and 1211

RIN 2590–AA66

Procedures and General Definitions

AGENCY: Federal Housing Finance Agency; Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is amending its regulations by relocating to the FHFA chapter of the Code of Federal Regulations (CFR) a Federal Housing Finance Board (Finance Board) regulation relating to procedures under which the Federal Home Loan Banks (Banks) and the Office of Finance (OF) may request waivers, approvals, no-action letters, and regulatory interpretations. The final rule modifies these regulations to make them also applicable to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (collectively, Enterprises) and repeals

provisions relating to the procedures for requesting case-by-case determinations. The final rule also relocates a definition to the general definitions section of the FHFA regulations.

DATES: This final rule is effective on December 1, 2014.

FOR FURTHER INFORMATION CONTACT: Amy Bogdon, *Amy.Bogdon@fhfa.gov,* (202) 649–3320, Associate Director, Division of Federal Home Loan Bank Regulation; or Michou Nguyen, *Michou.Nguyen@fhfa.gov,* (202) 649–3081 (not toll free numbers), Assistant General Counsel, Office of General Counsel, Federal Housing Finance Agency, 400 7th Street SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. Proposed Rule

On March 19, 2014, FHFA published in the **Federal Register** a proposed rule to adopt as its own, and extend to the Enterprises, certain provisions of the Finance Board regulations, located at 12 CFR 907 (part 907), pertaining to waivers, approvals, no-action letters, and regulatory interpretations.[1] The proposal was part of FHFA's ongoing project to repeal or relocate all of the regulations of its predecessor agencies. Proposed 12 CFR 1211 (part 1211) set forth procedures that the Banks and the Enterprises (collectively, the regulated entities) and the OF must follow in order to request waivers, approvals, non-objection letters, and regulatory interpretations from FHFA. It consisted of a section for definitions, sections describing the nature of requests for waivers, approvals, non-objection letters, and regulatory interpretations, and a section that set forth submission requirements for such requests. The proposed rule would have also repealed those provisions of part 907 that pertain to case-by-case determinations. Nearly all of the content of part 1211 was derived from part 907, with modifications as were necessary to apply the regulation to the Enterprises, or to clarify, update, or supplement the existing regulation, as appropriate. The proposed rule also stated in both the regulatory text and in the supplementary information that the procedures within proposed part 1211 were intended to be used to address regulatory matters pertaining to the Banks and the Enterprises, and were not intended to be used to address conservatorship matters.

B. Considerations of Differences Between the Banks and the Enterprises

When promulgating regulations or taking other actions that relate to the Banks, the FHFA Director (Director) is required by section 1313(f) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*) to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability. 12 U.S.C. 4513(f). In preparing this final rule, the Director has considered the differences between the Banks and the Enterprises as they relate to the above factors and has determined that the rule would not adversely affect any of the statutory factors.

II. Final Rule and Comments

FHFA received three comment letters in response to the proposed rule, one each from the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Bank of Atlanta, and the Federal Home Loan Bank of San Francisco (San Francisco Bank). Each of the comment letters recommended ways in which FHFA could revise certain aspects of the proposed rule. In considering those recommendations, FHFA has decided to revise two provisions of the proposed rule that pertain to which executives must sign submissions made under these procedures and the circumstances in which a resolution of the board of directors must accompany the submission. In all other respects, the final rule is unchanged from the proposed rule. The following paragraphs describe the two revisions being made to the final rule, as well as the reasons why FHFA has not revised the regulation in response to any of the other recommendations made by the commenters.

Signature Requirements

The proposed rule required all submissions under part 1211 to be signed by the president of the regulated entity or by the chairperson of the board of directors of the OF. Currently, part 907 of the Finance Board regulations only requires this for requests for no-action letters and permits the other types of submissions to be signed by authorized representatives of the entity. All three commenters argued that the proposal was too stringent, principally because there are likely to be circumstances in which executives other than the president or chairperson will be more familiar with the particular matter and thus would be the appropriate person for submitting the requests. Commenters also suggested that it would be more appropriate to allow each entity to decide which of its officers should sign submissions made under these rules. In addition, different regulated entities use different terms for their principal executive officers. The Enterprises are managed by ''chief executive officers,'' while the term for that officer used by the Banks, incorporated in the Bank Act and in FHFA's regulations, is ''president.'' FHFA agrees with the commenters and is revising § 1211.6(b) of the final rule so that it would permit the principal executive officer or any other authorized executive officer of a regulated entity to sign any submissions made under part 1211. The final rule makes a similar change with respect to the OF, which allows for the chairperson of the board of directors or any authorized executive officer to sign submissions under these procedures.

Board Resolution

The proposed rule would have carried over from the Finance Board regulations a provision requiring an entity seeking a waiver or approval to submit a resolution of its board of directors concurring in the substance of the submission and authorizing its filing, which would be in addition to the requirement that the submission be signed by the entity's president. Fannie Mae contended this requirement was not necessary and also could be burdensome in light of the limited number of board meetings that an entity may have each year. FHFA agrees that although the Finance Board may have had policy reasons for requiring evidence of the board's approval of waivers and approvals when these procedures were first adopted, there is no compelling reason to require a board resolution in support of a request for a waiver or approval when board resolutions are not required for regulatory interpretations or non-objection letters. Most submissions that have been made under these procedures generally are related to operational matters, which are the responsibility of management. Accordingly, FHFA is persuaded that it is not necessary for the board of directors to formally endorse these requests, and this requirement has been eliminated from the final rule.

[1] 79 FR 15257 (March 19, 2014).

Alternative Procedures for Approvals

Section 1211.3(b) of the proposed rule carried over from the Finance Board regulations a provision that stated that the procedures for obtaining FHFA's approval under part 1211 would not apply if alternative procedures for obtaining FHFA's approval are prescribed by a different statute, rule, regulation, policy, or order. Fannie Mae contended that the rule's reference to ''alternative application procedures,'' along with a reference to a single regulation that applies only to the Banks, did not make clear what other regulatory provisions might supersede the approval procedures in the proposed rule. To clarify the provision, Fannie Mae asked that FHFA list within the body of the regulation eight specific regulations with approval procedures that it believed would supersede those of part 1211. FHFA does not believe that the reference to ''alternative application procedures'' is either vague or ambiguous, and believes that the concept embodied in the language can be readily applied, *i.e.,* if Congress or FHFA has established a specific procedure by which a regulated entity is required to obtain the agency's approval, then that other procedure controls. FHFA also does not believe it is necessary, or appropriate, to list specific regulations within the body of the regulatory text of part 1211 because regulations change periodically and the list could become outdated or inaccurate. FHFA agrees with Fannie Mae's contention that the procedures for obtaining prior approval for Enterprise products under 12 CFR part 1253 and for obtaining approval of a housing goal plan, when such plan is required, and for petitioning for adjustments of housing goals under the Enterprise housing goals provisions of 12 CFR part 1282 are examples of alternative procedures that would supersede the approval procedures of this rule.

Informal Procedures for Obtaining a Non-Objection

Fannie Mae stated that from time to time it informally asks that FHFA, in its conservatorship capacity, agree to a proposed activity by stating that it has no objection to the Enterprise undertaking the activity. Fannie Mae expressed concern that the extension of the formal procedures in part 1211 to the Enterprises could adversely affect these existing informal arrangements between the conservator and the Enterprises. To prevent that from happening, Fannie Mae has asked that FHFA codify these existing informal arrangements into the final rule. As was stated in the proposed rule, and as the final rule continues to state, the procedures of part 1211 apply only to regulatory matters pertaining to the Enterprises and the Banks. They do not apply to conservatorship matters. For that reason, it would be inappropriate to codify these existing informal conservatorship arrangements in this regulation. Moreover, because the final rule does not apply to any conservatorship matters, it will not affect the functioning of the existing channels through which the Enterprises currently obtain guidance or non-objection from FHFA in its capacity as conservator.

Proposed Transactions

Section 1211.5(a) of the proposed rule carried over from the Finance Board regulations language allowing the General Counsel to issue a regulatory interpretation providing guidance with respect to a proposed transaction or activity. The Supplementary Information discussion of that provision further explained that requests for a regulatory interpretation must not relate to a hypothetical situation. Fannie Mae expressed concern about the reference to a hypothetical situation, believing that it may be difficult in practice to distinguish between a proposed business transaction that is at an early stage of development, and for which some interpretive guidance is needed, and a hypothetical situation. Fannie Mae contended that, without the ability to obtain FHFA guidance at an early stage in a proposal's development, it could expend significant resources on developing a proposal only to have FHFA later decline to issue an interpretation that would have authorized the contemplated transaction. Fannie Mae recommended that FHFA address this issue by deleting from the final rule the reference to ''proposed transaction or activity'' and allowing the General Counsel to determine on a case-by-case basis whether a particular proposal was sufficiently developed to allow the issuance of a regulatory interpretation. FHFA agrees that the reference to ''hypothetical situations'' could cause confusion and wishes to make clear that the operative language of § 1211.5(a)—''proposed transaction or activity''—does not mean that a specific business proposal needs to be fully developed in order for a regulated entity to request a regulatory interpretation. However, FHFA does not believe it would be appropriate to delete the reference to ''proposed transaction or activity'' from the regulatory text. In order for FHFA to properly consider a request to interpret its statutes or regulations in a particular manner, it needs some factual context within which to frame and assess the legal issues. By retaining the requirement that a request for a regulatory interpretation must pertain to a proposed transaction or activity FHFA believes that it is more likely to receive a well-reasoned legal analysis as part of the request, and that the regulatory interpretation will be justified by an actual need.

Prospective Effect of FHFA Action

The proposed rule explicitly reserved to the Director the right to modify, rescind, or supersede any previously granted waiver, approval, non-objection letter, or regulatory interpretation, provided that any such action by the Director would be effective only on a prospective basis. The San Francisco Bank expressed concern that such actions taken by the Director might inadvertently impair existing contractual rights that had been established in reliance on the previously issued guidance. To avoid that possibility, the San Francisco Bank recommended that FHFA amend part 1211 to explicitly state that any such action by the Director would not adversely affect any existing contractual rights that had been established in reliance on previously granted guidance. FHFA does not believe that it is necessary for the regulatory text to state that actions by the Director that are effective only on a prospective basis also do not have retrospective effect. FHFA believes that the commonly understood meaning of a regulatory action that is to be ''effective only on a prospective basis'' is that it affects only actions to be taken subsequently, and does not affect any actions taken by the regulated entities prior to the date of the Director's action, which would include any contractual rights established in reliance on the prior guidance. As a general proposition, FHFA evaluates actions taken by the regulated entities based on the law or regulations in effect at the time that the regulated entity acted, regardless of whether the statute, regulation or, in this case, regulatory guidance were to change at a subsequent date.[2]

Conservatorship Protocols

The introductory language of § 1211.6 of the proposed rule stated that requests submitted under these procedures ''shall pertain to regulatory matters

[2] For purposes of assessing prospective effect, particular situations may need to be evaluated on their own circumstances, *e.g.*, a pre-existing contract that is automatically renewing in perpetuity.

relating to the Banks or Enterprises, and not to conservatorship matters.'' The preamble to the proposed rule repeated that statement. The intent behind that provision was to recognize that FHFA, as conservator, has established a series of procedures for communications between the conservator and the Enterprises relating to their business operations, and to make clear that matters that are currently handled under those conservatorship protocols and letters of instruction should continue to be handled under those procedures, rather than the part 1211 procedures. Fannie Mae has expressed concern that it could be difficult for an Enterprise to distinguish between a conservatorship matter and a regulatory matter, given the breadth and complexity of the conservatorship operations, which could create uncertainty about whether a particular matter should be addressed under the existing conservatorship protocols or under the part 1211 procedures. To avoid that uncertainty, Fannie Mae has recommended that FHFA amend part 1211 to permit the Enterprises to submit all requests for guidance to the conservator, who could then decide whether it involved a regulatory matter to be considered under part 1211 or a conservatorship matter to be considered under the existing conservatorship procedures. FHFA acknowledges that, by themselves, the terms ''regulatory matters'' and ''conservatorship matters'' are imprecise, but also believes that within the context of the conservatorships, including the procedures that the conservator has established for communications with the Enterprises while in conservatorship and the types of matters that have been subject to those procedures, both Enterprises should be able to determine which requests for agency guidance fall within the conservatorship procedures and which would be more appropriate for submission under part 1211. Accordingly, the final rule does not include the revisions requested by Fannie Mae but instead retains the language from the proposed rule distinguishing ''conservatorship matters'' from ''regulatory matters.'' To the extent that an Enterprise is unable to determine which procedures to follow in a particular case, it should raise the matter with the conservator under the informal channels of communication that they currently use for discussions about a variety of other matters.

Waiver of the Entire Regulation

Section 1211.6(d) of the proposed rule would allow FHFA, for supervisory reasons or administrative efficiency, to accept from a regulated entity a submission or class of submissions that does not comply with all of the requirements of the proposed procedures. Fannie Mae speculated that there could be circumstances in which the application of any portion of part 1211 would not be appropriate, and thus suggested that FHFA amend the final rule to allow FHFA to waive the entirety of part 1211 if that need were to arise. FHFA does not believe that it would be appropriate to add such a blanket waiver provision to the final rule, principally because the existing provision, which authorizes the agency to accept any submissions that do not comply with the requirements of part 1211, affords significant latitude for a regulated entity to submit, and for FHFA to consider, a request for guidance that includes less information than might otherwise be required. Moreover, procedures established under part 1211 are for situations in which a regulated entity initiates the communication with the agency in order to obtain guidance on a regulatory matter that is not fully addressed by the statute or regulations. The part 1211 procedures do not address or limit the informal communications that occur between a regulated entity and FHFA as part of the regulatory or examination processes.

Case-by-Case Determinations

The proposed rule would have repealed a portion of the Finance Board regulations that allowed the Banks to seek ''case-by-case determinations'' from the agency for any legal or policy issues of first impression. FHFA reasoned that those procedures, which have never been used, are apt to be cumbersome and inefficient, in that they require a quasi-judicial hearing before the agency that would be binding only on the parties appearing before the agency, and that they do not allow the same broad public airing of proposed changes to FHFA policy as is provided by a notice and comment rulemaking. The San Francisco Bank objected to the proposed repeal of these provisions, contending that they could serve as an efficient means to resolve certain issues. For the reasons stated above and in the proposed rule, FHFA believes that there is little benefit to preserving these never-used procedures for case-by-case determinations of policy issues, and that matters of revisions to the agency's regulatory policy are better addressed through an administrative rulemaking process.

Bank Members

The Finance Board regulations had permitted the Banks, members of the Banks, the Office of Finance, and other interested parties to seek regulatory guidance under these procedures. The proposed rule would have limited the universe of requesters to the Banks, the Enterprises, and the Office of Finance because those are the only institutions that FHFA regulates. The San Francisco Bank believes that because Bank members and other parties may be indirectly affected by FHFA regulations, they also should be permitted to file submissions under part 1211. FHFA appreciates that regulations that directly affect the Banks may have some indirect effect on the members of the Banks. That said, FHFA has no direct regulatory authority over members and has few, if any, regulations that apply directly to the members. Similarly, FHFA has no authority over other third parties who may have an interest in Bank matters and has no regulations that would apply solely to third parties. Therefore, FHFA remains of the view that it is not appropriate for entities that are not subject to FHFA's regulatory oversight to invoke these procedures, which are primarily intended to provide a means by which the entities that are subject to the statute and regulations may obtain guidance about how the provisions are to be applied to them. To the extent that Bank members or other third parties wish to bring matters to the attention of the agency, they can do so through other avenues, such as through the FHFA ombudsman or through correspondence to the agency. The Finance Board procedures were rarely, if ever, used by such third parties.

Definitions

The final rule relocates the definition of the term ''Authorizing Statutes,'' which refers to the Bank Act and the chartering act of each Enterprise, from part 1211 to part 1201, the general definitions section for all FHFA regulations. No substantive modifications are being made to the definition, and FHFA believes that this relocation will facilitate the use of the term throughout FHFA's regulations.

III. Paperwork Reduction Act

The final rule does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to

analyze a regulation's impact on small entities if it is expected to have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of this final regulation and determined that it is not likely to have a significant economic impact on a substantial number of small entities because it applies only to the regulated entities and the OF, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 907

Administrative practice and procedure, Federal Home Loan Banks.

12 CFR Part 1201

Administrative practice and procedure, Federal Home Loan Banks, Government Sponsored Enterprises, Office of Finance, Regulated Entities.

12 CFR Part 1211

Administrative practice and procedure, Federal Home Loan Banks, Government-Sponsored Enterprises.

Accordingly, for reasons stated in the **SUPPLEMENTARY INFORMATION** and under the authority of 12 U.S.C. 4511, 4513, and 4526, FHFA hereby amends subchapter B of chapter IX and subchapter A of chapter XII of title 12 of the Code of Federal Regulations as follows:

CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

SUBCHAPTER B—FEDERAL HOUSING FINANCE BOARD ORGANIZATION AND OPERATIONS

PART 907—[REMOVED]

■ 1. Remove part 907.

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

SUBCHAPTER A—ORGANIZATION AND OPERATIONS

PART 1201—GENERAL DEFINITIONS APPYING TO ALL FEDERAL HOUSING FINANCE AGENCY REGULATIONS

■ 2. The authority citation for part 1201 continues to read as follows:

Authority: 12 U.S.C. 4511(b), 4513(a), 4513(b).

■ 3. Amend § 1201.1 by adding in correct alphabetical order a definition for the term ''Authorizing Statutes'' to read as follows:

§ 1201.1 Definitions.

* * * * *

Authorizing Statutes means the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act, and the Federal Home Loan Bank Act.

* * * * *

■ 4. Part 1211 is added to read as follows:

PART 1211—PROCEDURES

Subpart A—Definitions

Sec.
1211.1 Definitions.

Subpart B—Waivers, Approvals, Non-Objection Letters, and Regulatory Interpretations

Sec.
1211.2 Waivers.
1211.3 Approvals.
1211.4 Non-Objection Letters.
1211.5 Regulatory Interpretations.
1211.6 Submission requirements.

Authority: 12 U.S.C. 4511(b), 4513(a), 4526.

Subpart A—Definitions

§ 1211.1 Definitions.

As used in this part:

Approval means a written statement issued to a regulated entity or the Office of Finance approving a transaction, activity, or item that requires FHFA approval under a statute, rule, regulation, policy, or order.

Non-Objection Letter means a written statement issued to a regulated entity or the Office of Finance providing that FHFA does not object to a proposed transaction or activity.

Regulatory Interpretation means a written interpretation issued by the FHFA General Counsel with respect to the application of a statute, rule, regulation, or order to a proposed transaction or activity.

Requester means an entity that has submitted an application for a Waiver or Approval or a request for a Non-Objection Letter or Regulatory Interpretation.

Waiver means a written statement issued by the Director to a regulated entity or the Office of Finance that waives a provision, restriction, or requirement of an FHFA rule, regulation, policy, or order, or a required submission of information, not otherwise required by law, in connection with a particular transaction or activity.

Subpart B—Waivers, Approvals, Non-Objection Letters, and Regulatory Interpretations

§ 1211.2 Waivers.

(a) *Authority.* The Director reserves the right, in his or her discretion and in connection with a particular transaction or activity, to waive any provision, restriction, or requirement of this chapter (or of any Office of Federal Housing Enterprise Oversight or Federal Housing Finance Board regulation), or any required submission of information, not otherwise required by law, if such Waiver is not inconsistent with the law and does not adversely affect any substantial existing rights, upon a determination that application of the provision, restriction, or requirement would adversely affect achievement of the purposes of the Authorizing Statutes or the Safety and Soundness Act, or upon a requester's showing of good cause. The Director also reserves the right to modify, rescind, or supersede any previously issued Waiver, with such action being effective only on a prospective basis.

(b) *Application.* A regulated entity or the Office of Finance may apply for a Waiver in accordance with § 1211.6.

§ 1211.3 Approvals.

(a) *Authority.* The Deputy Directors for Enterprise Regulation and for Federal Home Loan Bank Regulation, or their designees, may grant requests submitted by an Enterprise or by a Bank or the Office of Finance, respectively, seeking approval of any transaction, activity, or item that requires FHFA approval under any applicable statute, rule, regulation, policy, or order. The Director reserves the right to modify, rescind, or supersede an Approval, with such action being effective only on a prospective basis.

(b) *Requests.* A regulated entity or the Office of Finance may apply for an Approval in accordance with § 1211.6, unless alternative application procedures are prescribed by the applicable statute, rule, regulation, policy, or order for the transaction, activity, or item at issue.

(c) *Reservation.* The Deputy Directors for Enterprise Regulation and for Federal Home Loan Bank Regulation, as appropriate, may, in their discretion, prescribe additional or alternative procedures for any application for approval of a transaction, activity, or item.

§ 1211.4 Non-Objection Letters.

(a) *Authority.* The Deputy Directors for Enterprise Regulation and for Federal Home Loan Bank Regulation, or their designees, may, in their discretion, issue to an Enterprise or to a Bank or the Office of Finance, respectively, a Non-Objection Letter stating that FHFA does not object to a proposed transaction or activity for supervisory, regulatory, or policy reasons. The Director reserves the right to modify, rescind, or supersede a

Non-Objection Letter, with such action being effective only on a prospective basis.

(b) *Requests.* A regulated entity or the Office of Finance may request a Non-Objection Letter in accordance with § 1211.6.

§ 1211.5 Regulatory Interpretations.

(a) *Authority.* The General Counsel may, in his or her discretion, issue a Regulatory Interpretation to a regulated entity or the Office of Finance, providing guidance with respect to the application of any applicable statute, rule, regulation, or order to a proposed transaction or activity. The Director reserves the right to modify, rescind, or supersede a Regulatory Interpretation, with such action being effective only on a prospective basis.

(b) *Requests.* A regulated entity or the Office of Finance may request a Regulatory Interpretation in accordance with § 1211.6.

§ 1211.6 Submission requirements.

Applications for a Waiver or Approval and requests for a Non-Objection Letter or Regulatory Interpretation shall comply with the requirements of this section and shall pertain to regulatory matters relating to the Banks or Enterprises, and not to conservatorship matters.

(a) *Filing.* Each application or request shall be in writing. A Bank or the Office of Finance shall submit its filing to the Deputy Director for the Division of Federal Home Loan Bank Regulation, and an Enterprise shall submit its filing to the Deputy Director for Enterprise Regulation. Applications for regulatory interpretations shall be submitted also to the General Counsel.

(b) *Authorization.* An application for a Waiver or Approval and a request for a Non-Objection Letter or Regulatory Interpretation shall be signed by the principal executive officer or other authorized executive officer of the regulated entity or by the chairperson of the board of directors or authorized executive officer of the Office of Finance, as appropriate.

(c) *Information requirements.* Each application or request shall contain:

(1) The name of the requester, and the name, title, business address, telephone number, and business electronic mail address, if any, of the official filing the application or request on its behalf;

(2) The name, business address, telephone number, and business electronic mail address, if any, of a contact person from whom FHFA staff may seek additional information if necessary;

(3) The section numbers of the particular provisions of the applicable statutes or rules, regulations, policies, or orders to which the application or request relates;

(4) Identification of the determination or relief requested, including any alternative relief requested if the primary relief is denied, and a clear statement of why such relief is needed;

(5) A statement of the particular facts and circumstances giving rise to the application or request and identifying all relevant legal and factual issues;

(6) References to all other relevant authorities that the regulated entity or Office of Finance believes should be considered in evaluating the application or request, including the Authorizing Statutes, Safety and Soundness Act, FHFA rules, regulations, policies, orders, judicial decisions, administrative decisions, relevant statutory interpretations, and policy statements;

(7) References to any Waivers, Non-Objection Letters, Approvals, or Regulatory Interpretations issued in the past in response to circumstances similar to those surrounding the request or application;

(8) For any application or request involving interpretation of the Authorizing Statutes, Safety and Soundness Act, or FHFA regulations, a reasoned opinion of counsel supporting the relief or interpretation sought and distinguishing any adverse authority;

(9) Any other non-duplicative, relevant supporting documentation; and

(10) A certification by a person with knowledge of the facts that the representations made in the application or request are accurate and complete. The following form of certification is sufficient for this purpose: ''I hereby certify that the statements contained in the submission are true and complete to the best of my knowledge. [Name and Title].''

(d) *Exceptions.* In any given matter or class of matters, the Director, the Deputy Director for Federal Home Loan Bank Regulation, the Deputy Director for Enterprise Regulation, or the General Counsel, as appropriate, may accept an application or request that does not comply with the requirements of this section, for supervisory reasons or administrative efficiency.

(e) *Withdrawal.* Once filed, an application or request may be withdrawn only upon written request, and only if FHFA has not yet acted on the application or request.

Dated: October 27, 2014.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

[FR Doc. 2014–25973 Filed 10–30–14; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. FAA–2014–0376; Notice No. 33–014–SC]

Special Conditions: SNECMA, Silvercrest-2 SC–2D; Rated 10-Minute One Engine Inoperative Takeoff Thrust at High Ambient Temperature

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These final special conditions are issued for the SNECMA, Silvercrest-2 SC–2D engine model. This engine will have a novel or unusual design feature—an additional takeoff rating that increases the exhaust gas temperature (EGT) limit to maintain takeoff thrust in certain high ambient temperature conditions with one engine inoperative (OEI) for a maximum of 10 minutes. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These final special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is December 1, 2014.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this rule, contact Tara Fitzgerald, ANE–111, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803–5213; telephone (781) 238–7130; facsimile (781) 238–7199; email *tara.fitzgerald@faa.gov.* For legal questions concerning this rule, contact Vincent Bennett, ANE–7, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (781) 238–7044; facsimile (781) 238–7055; email *vincent.bennett@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On April 19, 2011, SNECMA applied for a new type certificate (TC) for the Silvercrest-2 SC–2D engine model. For

their Silvercrest-2 SC–2D engine model, SNECMA requested an additional takeoff rating to maintain takeoff thrust in certain high ambient temperature conditions with OEI. Therefore, the Silvercrest-2 SC–2D engine model will have two different takeoff ratings. The first rating corresponds with the rated takeoff thrust of the engine. The second takeoff rating maintains the takeoff thrust in certain high ambient temperature conditions for a maximum of 10 minutes when one engine is inoperative. This additional takeoff rating is named, ''Rated 10-Minute OEI Takeoff Thrust at High Ambient Temperature'' (Rated 10-minute OEI TOTHAT).

These final special conditions are necessary because current part 33 regulations do not contain airworthiness standards for airplane applications of OEI ratings. For an airplane application, the OEI rating is the same as the rated thrust of the engine. All OEI ratings in current part 33 regulations are only applicable to rotorcraft applications. These final special conditions were modeled based on the rotorcraft requirements for the 30-second and 2-minute OEI ratings, and modified to represent the airplane application. The Rated 10-minute OEI TOTHAT shares common features, such as the need to notify the pilot and maintenance personnel about the rating's use, provides data needed for power assurance check, and continued validation of the related maintenance procedures.

The Rated 10-minute OEI TOTHAT is for use during OEI events that occur during takeoff in high ambient temperature conditions, up to 5 degrees Celsius hotter than the rated takeoff thrust corner point. Under these unique conditions (extreme hot day and OEI), the Rated 10-minute OEI TOTHAT leads to an increase in EGT to maintain the takeoff thrust of the engine. These final special conditions contain additional mandatory post-flight inspection and maintenance action requirements associated with any use of the Rated 10-minute OEI TOTHAT. These requirements add a rating definition in part 1.1; mandatory inspections in the ICA; instructions for installing and operating the engine; engine rating and operating limitations; instrument connection; and endurance testing.

The current requirements of the endurance test under § 33.87 represent a typical airplane flight profile and the severity of the takeoff rating. Therefore, the endurance test under § 33.87 covers normal, all-engines-operating takeoff conditions for which the engine control system limits the engine to the takeoff thrust rating. These final special conditions for the endurance testing requirements are intended to represent the airplane flight profile when an OEI event occurs during takeoff under specified ambient temperatures, and until the mandatory inspection and maintenance actions can be performed. These final special conditions require endurance testing that is not less than 135 minutes in duration and demonstrates the engine is capable of the additional Rated 10-minute OEI TOTHAT rating at the higher EGT limit following completion of the tests required by § 33.87(b), without disassembly or modification.

The associated engine deterioration after use of the Rated 10-minute OEI TOTHAT is not known without the intervening mandatory inspections in these special conditions. The mandatory inspections ensure the engine will continue to comply with its certification basis after any use of the Rated 10-minute OEI TOTHAT. The applicant is expected to assess the deterioration from use of the Rated 10-minute OEI TOTHAT. The Airworthiness Limitations section must prescribe the mandatory post-flight inspections and maintenance actions associated with any use of the Rated 10-minute OEI TOTHAT.

These special conditions are necessary because the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the additional takeoff rating, and their requirements maintain a level of safety equivalent to the level intended by the applicable airworthiness standards in effect on the date of application.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, SNECMA must show that the Silvercrest-2 SC–2D meets the applicable provisions of the applicable regulations in effect on the date of application, except as detailed in paragraphs 21.101(b) and (c). The FAA has determined the following certification basis for the Silvercrest-2 SC–2D engine model:

1. 14 CFR part 33, ''Airworthiness Standards Aircraft Engines,'' dated February 1, 1965, with Amendments 33–1 through 33–31, dated July 18, 2011.

If the FAA finds that the regulations in effect on the date of the application for the change do not provide adequate or appropriate safety standards for the Silvercrest-2 SC–2D because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to complying with the applicable product airworthiness regulations and the requirements of these special conditions, the Silvercrest-2 SC–2D engine model must also comply with the fuel venting and exhaust emission requirements of 14 CFR part 34.

The FAA issues special conditions, as defined in 14 CFR 11.19, per § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The SNECMA Silvercrest-2 SC–2D engine model will incorporate an additional takeoff rating to maintain takeoff thrust in certain high ambient temperature OEI takeoff conditions for a maximum of 10 minutes. The result will be two different takeoff ratings, one for the rated takeoff thrust of the engine and the other to maintain the takeoff thrust in certain high ambient temperature OEI takeoff conditions for a maximum of 10 minutes. The additional takeoff rating is referred to as ''Rated 10-Minute OEI Takeoff Thrust at High Ambient Temperature'' (Rated 10-minute OEI TOTHAT).

The Rated 10-minute OEI TOTHAT is a novel and unusual design feature that requires additional airworthiness standards for type certification of the SNECMA Silvercrest-2 SC–2D engine model.

Discussion of Comments

A notice of proposed special conditions, No. 33–14–01–SC, for the Silvercrest-2 SC–2D engine model was published in the **Federal Register** on July 31, 2014 (79 FR 44321). We did not receive any public comments. We did, however, modify the proposed special conditions by removing requirement (b) under ''§ 33.28, Engine control systems.'' These requirements are addressed at the aircraft level.

Applicability

As discussed above, these special conditions are applicable to the Silvercrest-2 SC–2D engine model. Should SNECMA apply at a later date for a change to the type certificate to include another engine model incorporating the same novel or unusual

design feature, these special conditions would apply to that model as well.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting these special conditions. This action affects only the Rated 10-minute OEI TOTHAT features on the Silvercrest-2 SC–2D engine model. It is not a rule of general applicability and applies only to SNECMA, who requested FAA approval of this engine feature.

List of Subjects in 14 CFR Part 33

Air Transportation, Aircraft, Aviation, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the SNECMA Silvercrest-2 SC–2D engine model.

1. Part 1.1, Definitions

''Rated 10-Minute One Engine Inoperative Takeoff Thrust at High Ambient Temperature'' (Rated 10-minute OEI TOTHAT) means the approved engine thrust developed under specified altitudes and temperatures within the operating limitations established for the engine, and for continuation of flight operation after failure or shutdown of one engine in a multi-engine airplane during takeoff operation. Use is limited to two periods, no longer than 10 minutes each in any one flight, and followed by mandatory inspection and maintenance actions.

2. Part 33 Requirements

In addition to the airworthiness standards in 14 CFR part 33, effective February 1, 1965, Amendments 33–1 through 33–31 applicable to the engine and the Rated 10-minute OEI TOTHAT, the following special conditions apply:

§ 33.4 Instructions for Continued Airworthiness.

(a) The Airworthiness Limitations section must prescribe the mandatory post-flight inspections and maintenance actions associated with any use of the Rated 10-minute OEI TOTHAT.

(b) The applicant must validate the adequacy of the inspections and maintenance actions required under paragraph § 33.4(a) of these special conditions.

(c) The applicant must establish an in-service engine evaluation program to ensure the continued adequacy of the instructions for mandatory post-flight inspections and maintenance actions prescribed under paragraph § 33.4(a) of these special conditions, and of the data for thrust assurance procedures required by § 33.5(b)(1) of these special conditions. The program must include service engine tests or equivalent service engine test experience on engines of similar design and evaluations of service use of the Rated 10-minute OEI TOTHAT.

§ 33.5 Instruction manual for installing and operating the engine.

(a) Installation instructions:

(1) The applicant must identify the means, or provisions for means, provided in compliance with the requirements of § 33.29 of these special conditions.

(2) The applicant must specify that the engine thrust control system automatically resets the thrust on the operating engine to the Rated 10-minute OEI TOTHAT level when one engine fails during takeoff at specified altitudes and temperatures, and that the Rated 10-minute OEI TOTHAT is not available when all engines are operational.

(b) Operating instructions:

(1) The applicant must provide data on engine performance characteristics and variability to enable the airplane manufacturer to establish airplane thrust assurance procedures.

§ 33.7 Engine ratings and operating limitations.

(a) The Rated 10-minute OEI TOTHAT and the associated operating limitations are established as follows:

(1) The thrust is the same as the engine takeoff rated thrust with extended flat rating corner point,

(2) The rotational speed limits are the same as those associated with the engine takeoff rated thrust,

(3) The applicant must establish a gas temperature steady-state limit and, if necessary, a transient gas overtemperature limit for which the time duration is no longer than 30 seconds, and

(4) The use is limited to two periods of no longer than 10 minutes each in any one flight, and followed by mandatory inspection and maintenance actions prescribed by § 33.4(a) of these special conditions.

(b) The applicant must propose language to include in the type certificate data sheet specified in § 21.41 for the following:

(1) The Rated 10-minute OEI TOTHAT and associated limitations.

(2) As required by § 33.5(b), Operating instructions, include a note stating that ''Rated 10-Minute One Engine Inoperative Takeoff Thrust at High Ambient Temperature'' (Rated 10-minute OEI TOTHAT) means the approved engine thrust developed under specified altitudes and temperatures within the operating limitations established for the engine, and for continuation of flight operation after failure or shutdown of one engine in a multi-engine airplane during takeoff operation. Use is limited to two periods, no longer than 10 minutes each in any one flight, and followed by mandatory inspection and maintenance actions.

(3) As required by § 33.5(b), Operating instructions, include a note stating that the engine thrust control system automatically resets the thrust on the operating engine to the Rated 10-minute OEI TOTHAT level when one engine fails during takeoff at specified altitudes and temperatures, and that the Rated 10-minute OEI TOTHAT is not available when all engines are operational.

§ 33.28 Engine control systems.

The engine must incorporate a means, or a provision for a means, for automatic availability and automatic control of the Rated 10-minute OEI TOTHAT.

§ 33.29 Instrument connection.

(a) The engine must:

(1) Have means, or provisions for means, to alert the pilot when the Rated 10-minute OEI TOTHAT is in use, when the event begins, and when the time interval expires.

(2) Have means, or provision for means, which cannot be reset in flight, to:

(i) Automatically record each use and duration of the Rated 10-minute OEI TOTHAT, and

(ii) Alert maintenance personnel that the engine has been operated at the Rated 10-minute OEI TOTHAT, and permit retrieval of recorded data.

(iii) Have means, or provision for means, to enable routine verification of the proper operation of the means in § 33.29(a)(1) and (a)(2) of these special conditions.

§ 33.85(b) Calibration tests.

The applicant must base the calibration test on the thrust check at the end of the endurance test required by § 33.87 of these special conditions.

§ 33.87 Endurance test.

(a) Following completion of the tests required by § 33.87(b), and without intervening disassembly, except as needed to replace those parts described as consumables in the ICA, the

applicant must conduct the following test sequence for a total time of not less than 135 minutes:

(1) Ten minutes at Rated 10-minute OEI TOTHAT,

(2) Sixty-five minutes at rated maximum continuous thrust,

(3) One minute at 50 percent of rated takeoff thrust,

(4) Ten minutes at Rated 10-minute OEI TOTHAT,

(5) One minute at flight idle,

(6) Ten minutes at Rated 10-minute OEI TOTHAT,

(7) Five minutes at rated maximum continuous thrust,

(8) One minute at 50 percent of rated takeoff thrust,

(9) Five minutes at Rated 10-minute OEI TOTHAT,

(10) One minute at flight idle,

(11) Ten minutes at Rated 10-minute OEI TOTHAT,

(12) Five minutes at rated maximum continuous thrust,

(13) One minute at 50 percent of rated takeoff thrust,

(14) Nine minutes at Rated 10-minute OEI TOTHAT, and

(15) One minute at flight idle

(b) The test sequence of § 33.87(a)(1) through (a)(15) of these special conditions must be run continuously. If a stop occurs during these tests, the interrupted sequence must be repeated unless the applicant shows that the severity of the test would not be reduced if the current tests were continued.

(c) Where the engine characteristics are such that acceleration to the Rated 10-minute OEI TOTHAT results in a transient overtemperature in excess of the steady-state temperature limit identified in § 33.7(a)(3) of these special conditions, the transient gas overtemperature must be applied to each acceleration to the Rated 10-minute OEI TOTHAT of the test sequence in § 33.87(a) of these special conditions.

§ 33.93 Teardown inspection.

The applicant must perform the teardown inspection required by § 33.93(a) after completing the endurance test prescribed by § 33.87 of these special conditions.

§ 33.201 Design and test requirements for Early ETOPS eligibility.

In addition to the requirements of § 33.201(c)(1), the simulated ETOPS mission cyclic endurance test must include two cycles of 10 minute duration, each at the Rated 10-minute OEI TOTHAT; one before the last diversion cycle and one at the end of the ETOPS test.

Issued in Burlington, Massachusetts, on October 23, 2014.

Colleen M. D'Alessandro,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2014–25884 Filed 10–30–14; 8:45 am]

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37 CFR Part 380

[2005–1 CRB DTRA (Webcasting II)]

Digital Performance Right in Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final Determination after Second Remand.

SUMMARY: The Copyright Royalty Judges are announcing their final determination upholding the validity and application of the $500 minimum fee for noncommercial webcasters for the licensing period 2006 through 2010. The judges issued the determination in response to a second order of remand by the United States Court of Appeals for the District of Columbia Circuit. Their review of the evidence was *de novo.* The judges issued their initial determination in March 2014 and received no motions for rehearing.

DATES: *Effective date:* October 31, 2014.

Applicability date: The fee applies to the license period January 1, 2006, through December 31, 2010.

ADDRESSES: The determination is also published on the agency's Web site at *www.loc.gov/crb.* For related matters see also the Federal eRulemaking Portal at *www.regulations.gov.*

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SUPPLEMENTARY INFORMATION:

I. Background

The captioned matter began with a notice in the **Federal Register** in February 2005. In that notice, the Copyright Royalty Judges (Judges) commenced a rate-setting proceeding and solicited Petitions to Participate. *See* 70 FR 7970 (February 16, 2005). The aim of the proceeding was to establish royalty rates and terms, including the establishment of minimum fees, applicable to entities making ephemeral recordings of copyrighted sound recordings and digitally performing those recordings[1]. The Judges set rates and terms for use of the rights during the period 2006 through 2010, publishing their Final Determination on May 1, 2007. 72 FR 24084 (May 1, 2007) (*Web II*).

Intercollegiate Broadcasting System, Inc. (IBS) appealed the Judges' determination to the U.S. Court of Appeals for the DC Circuit. The DC Circuit remanded the Judges' determination of the minimum fee established for noncommercial webcasters, *viz.* $500 per year per station or channel, citing insufficient evidence in the record to substantiate the $500 minimum fee. On May 18, 2010, after granting the parties leave to engage in additional briefing and discovery, the Judges held a further hearing on remand. Following the remand hearing, the Judges issued their determination on September 17, 2010. 75 FR 56873 (Sept. 17, 2010).

IBS again appealed the Judges' determination. During the pendency of the *Web II* appeal, the Judges issued a final determination regarding rates and terms for the same licenses for the period 2011 through 2015.[2] (*Web III*). IBS appealed the Judges' *Web III* determination challenging again the $500 minimum fee and asserting that appointment of the Judges violated the Appointments Clause of the U.S. Constitution. Given the overlap of issues and the introduction of a constitutional challenge, the DC Circuit stayed further proceedings on appeal in *Web II.*

The DC Circuit decided *Web III* and concluded that the Judges' appointments were unconstitutional. The DC Circuit struck portions of the Copyright Act that it determined to be unconstitutional and the Librarian of Congress appointed a panel of Judges consistent with the altered statute. The DC Circuit remanded *Web III* for further proceedings [3] by a constitutionally valid panel of Judges. After the *Web III* remand, on motion of the *Web II* parties, the DC Circuit vacated and remanded the *Web II* matter.[4]

The issue before the Judges is determination of the validity and

[1] Owners of rights in sound recordings are subject to compulsory licenses under the Copyright Act. *See, e.g.,* 17 U.S.C. 112(e) (ephemeral recordings), 114 (d)(2), (3) (transmission). The Judges are tasked to adjudicate, *inter alia,* disputes relating to licensing fees. *See, e.g.,* 17 U.S.C. 112(e)(3), (4), 114(f), 801, 803, 804.

[2] *See* 76 FR 13026 (Mar. 9, 2011) (*Web III*).

[3] *Intercollegiate Broadcasting Sys., Inc.* v. *Copyright Royalty Board,* 684 F.3d 1332, 1342 (D.C. Cir. 2012), *cert. denied,* 133 S. Ct. 2735 (2013).

[4] *Intercollegiate Broadcasting Sys., Inc.* v. *Copyright Royalty Board,* No. 10–1314 (D.C. Cir. Sept. 30, 2013) (order granting joint motion for vacatur and remand).

application of the $500 minimum fee for noncommercial webcasters for the period 2006 through 2010. The Judges, after notice to the parties, concluded that they should reach this determination, to the extent a new determination is required, under section 803(b)(5) (paper proceedings) after a *de novo* review of the record.

For all of the reasons discussed herein, the Judges determine that the minimum fee for noncommercial webcasters for the license term 2006 through 2010 shall be and remain $500 per station or channel, applicable to the annual flat fee royalties payable for usage of sound recordings for up to 159,140 Aggregate Tuning Hours (ATH) per month. The Judges assert that the question on remand is moot. Nonetheless, the Judges detail in this determination reasons sufficient to uphold their decision on the merits, to the extent required.

The Judges issued their Initial Determination on Second Remand on March 11, 2014. No party moved for rehearing. Accordingly, the Judges now issue their Final Determination in this matter.[5]

II. The Judges Conclude That the Issue on Remand Is Subsumed by the Affirmance of the Flat Royalty Rate of $500

IBS argues in this remand proceeding that the Judges should eliminate, or significantly reduce, the $500 minimum fee for noncommercial webcasters that the Judges adopted and the DC Circuit remanded in the *Web II* Determination. That minimum fee was in effect for the period 2006 through 2010, and thus *expired more than three years ago.* Any change to the minimum fee at issue in this remand proceeding would have no prospective effect whatever on the rates that noncommercial webcasters pay. If a decision by the Judges in IBS's favor at this stage were to have any effect at all, it would be by requiring a retrospective adjustment of noncommercial webcasters' payment obligations (*e.g.,* a refund of minimum fees already paid). Such a remedy would be warranted only if a reduction in the minimum fee would also result in a reduction of a noncommercial webcaster's total payment obligation.

The minimum fee that a webcaster pays is only one component of the webcasters' total payment obligation under the section 114 and section 112(e) statutory licenses. The Final Determination established a rate structure for noncommercial webcasters that consisted of a flat annual fee of $500 for the first 159,140 ATH of usage per month, 37 CFR 380.3(a)(2)(i) (2008), plus a per-performance rate equal to the commercial rate for usage in excess of 159,140 ATH per month. 37 CFR 380.3(a)(2)(ii) (2008). In addition, noncommercial webcasters were subject to the contested $500 annual minimum fee. The minimum fee was non-refundable, but recoupable against the $500 flat royalty fee. 37 CFR 380.3(b) (2008); *see also Final Determination,* 72 FR at 24100.[6]

Because the $500 minimum fee was recoupable, a noncommercial webcaster's single payment of $500 satisfied both the *minimum fee* and the $500 *flat rate* for the first 159,140 ATH of monthly usage. Nonetheless, the flat rate and the minimum fee are separate and distinct components of the rate structure, codified in separate sections of the Code of Federal Regulations.

In its decision of the appeal of the Final Determination, the DC Circuit ''vacate[d] the $500 minimum fee'' for both commercial[7] and noncommercial webcasters and ''remand[ed] that portion of the determination to the Copyright Royalty Judges for further proceedings not inconsistent with this opinion.'' 574 F.3d at 772. ''All other portions of the determination [were] affirmed.'' *Id.; accord id.* at 753.

The plain language of the DC Circuit's remand order demonstrates that the court affirmed the flat rate component of the rate structure for noncommercial webcasters. Even if the Judges were to reduce the minimum fee retroactively, noncommercial webcasters' obligation to pay a flat royalty rate of $500 annually would be unaffected. Consequently, a decision in IBS's favor on the minimum fee issue would have no effect on noncommercial webcasters' total payment obligations. That is, given that the $500 payment satisfied both the *minimum fee* and the $500 *flat rate* for the first 159,140 ATH of usage, IBS and its constituents would realize no benefit, even if the Judges were to reduce the minimum fee, thereby eliminating any actual issue for adjudication. The Judges conclude, therefore, that the instant matter has been rendered moot and that IBS lacks a ''significant interest in the proceedings'' as required by section 803(b)(2)(C) of the Act.

III. Assuming the Issue on Remand States an Issue for Adjudication, the Judges' Determination on Remand Is Narrowed by the Directive From the D.C. Circuit

A. The First Remand

In vacating and remanding the Judges' original *Web II* Determination with regard to the ''Minimum Annual Fee''[8] for noncommercial webcasters subject to the statutory license, the D.C. Circuit held:

> Because there is *no record evidence* that $500 represented SoundExchange's administrative cost per channel or station, the Judges' determination in this regard cannot be sustained.

Intercollegiate Broadcast System, Inc. v. *Copyright Royalty Board,* 574 F.3d 748, 767 (D.C. Cir. 2009) (emphasis added). The basis for the Court's holding was that, in the absence of sufficient evidence, ''the $500 minimum fee was *arbitrary, capricious and not supported by record* evidence . . . .'' *Id.* at 772 (emphasis added).

Accordingly, the D.C. Circuit ''remand[ed] the issue of the appropriate minimum fee for noncommercials.'' *Id.* at 767. To allow for a cure of this defect on remand, the D.C. Circuit instructed the Judges to undertake ''further proceedings not inconsistent with this opinion,'' *id.,* which required the Judges to receive and consider *new* ''record evidence'' of ''SoundExchange's administrative cost per channel or station.'' *Id.* at 767 (emphasis added).

For the first remand, the Judges permitted the Participants to submit additional papers and to engage in supplemental discovery. Thereafter, on May 18, 2010, the Judges conducted the remand hearing required by the D.C. Circuit. To the extent this second remand presents an issue for adjudication, the current, reconstituted panel of Judges has conducted a *de novo* review of the evidence and transcripts of the first remand and analyzed the propriety of the annual $500 minimum fee per station or channel.

B. The Participants' Witnesses and Relevant Evidence

In the first remand proceeding, SoundExchange, as the collective representing the licensors, presented the written and oral testimony of W. Tucker McCrady, a member of its Licensing Committee, which, is directly

[5] The Register of Copyrights completed her review of this determination on October 20, 2014, and stated that ''[n]o correction or any further actions will be taken by the Register on this matter.'' *See* 17 U.S.C. 802 (f)(1)(D).

[6] This minimum fee, codified in 37 CFR 380.3(b) (2008), applies to both commercial and noncommercial webcasters.

[7] The commercial webcasters and SoundExchange reached a settlement after the Final Determination was remanded, which the Judges adopted, leaving only the minimum fee for noncommercial webcasters for the Judges to determine in this remand proceeding. *See* 75 FR 6097 (Feb. 8, 2010).

[8] The rates and terms established by the Judges ''shall include a minimum fee . . . .'' 17 U.S.C. 114(f)(2)(B).

responsible for negotiating and approving any settlements related to statutory licenses on behalf of SoundExchange. McCrady WDT at 1. Mr. McCrady is also associate counsel, digital legal affairs, for Warner Music Group (WMG). *Id.* SoundExchange also presented the written and oral testimony of Barrie Kessler, its chief operating officer. SoundExchange also introduced into evidence agreements it reached pursuant to the Webcaster Settlement Acts of 2008 and 2009, with *(i)* College Broadcasters, Inc. (CBI) for noncommercial educational webcasters; *(ii)* National Association of Broadcasters (NAB) for broadcasters who also webcast performances of sound recordings; *(iii)* Sirius XM Radio, Inc. (Sirius XM) for webcasts of signals provided by satellite services; and *(iv)* DiMA for commercial webcasters. 5/18/10 Tr. at 13 (McCrady).

IBS represents a membership of more than 1,000 student-staffed stations and webcasting operations affiliated with domestic academic institutions, and purports to be the largest such organization in the United States. Frederick J. Kass, Jr. (Pre-Remand) WDT at ¶ 6. IBS presented its case principally through the written and oral testimony of Captain Kass, treasurer, director of operations (chief operating officer), and a director of IBS.[9] In addition, IBS presented the written testimony of John E. Murphy, general manager of WHUS, a university radio station at the University of Connecticut, and Benjamin Shaiken, at the time a student at the University of Connecticut and operations manager of WHUS.

C. The Minimum Fee Proposals of the Participants

1. The SoundExchange Proposal

SoundExchange proposed the same dollar level for a minimum fee for noncommercial webcasters, $500, as it had proposed prior to the first remand. Specifically, SoundExchange proposed:

> Each Noncommercial Webcaster will pay an annual, nonrefundable minimum fee of $500 for each calendar year or part of a calendar year of the license period during which they are [*sic*] Licensees pursuant to licenses under 17 U.S.C. 114. This annual minimum fee is payable for each individual channel and each individual station maintained by Noncommercial Webcasters and is also payable for each individual Side Channel maintained by Broadcasters who are Licensees. The minimum fee payable under 17 U.S.C. 112 is deemed to be included within the minimum fee payable under 17 U.S.C. 114. Upon payment of the minimum fee, the Licensee will receive a credit in the amount of the minimum fee against any additional royalty fees payable in the same calendar year.

Proposed Rates and Terms of SoundExchange, Inc. for the Remand Proceeding Concerning the Minimum Fee Payable by Noncommercial Webcasters (Jan. 11, 2010).

Consistent with the Judges' prior ruling in *Web II,* SoundExchange's proposed minimum fee would be ''fully recoupable'' against royalty fees owed by noncommercial webcasters subject to the statutory license. 5/18/10 Tr. at 14 (McCrady).

2. The IBS Proposal

IBS proposed that certain smaller noncommercial webcasters be exempt from paying any minimum fee. 5/18/10 Tr. at 76, 83–85 (Kass); Kass (Supplemental) WDT at 2 (For certain smaller noncommercial webcasters, ''[t]he imposition of a minimum fee should be rejected by the Judges.'') [10] More particularly, IBS proposed that an exemption from the minimum fee be provided to webcasters that met IBS's proposed (and unprecedented) classification as either ''Small Noncommercial Webcasters,'' defined by IBS as those whose total performances of digitally recorded music is less than 15,914 ATH per month, or ''Very Small Noncommercial Webcasters,'' defined by IBS as those whose total performances of digitally recorded music is less than 6,365 ATH per month. *IBS's Restated Rate Proposal* (June 1, 2010). IBS did not propose a separate minimum fee for noncommercial webcasters who performed more than 15,914 ATH per month, nor did IBS object to SoundExchange's proposed minimum fee for noncommercial webcasters who webcast more than 15,914 ATH per month.

In addition, IBS raised issues that went beyond the scope of the remand instructions of the D.C. Circuit.[11]

D. The Participants' Testimony and Evidence

1. SoundExchange's Testimony and Evidence

SoundExchange—through Ms. Kessler's testimony—provided precisely the type of evidence required by the D.C. Circuit in its remand instructions. That is, Ms. Kessler testified regarding the costs incurred by SoundExchange to administer the royalty payment and distribution process under the statutory license. As Ms. Kessler testified, broadly speaking, ''there is not necessarily much difference between a noncommercial service and a commercial service in terms of the effort required for [SoundExchange] to administer . . . use of sound recordings.'' Kessler Corrected WDT at 3.

Ms. Kessler testified that 305 noncommercial webcasters paid the minimum fee of $500 in 2009. Kessler Corrected WDT at 3; 5/18/10 Tr. at 34 (Kessler).[12] According to Ms. Kessler, by making these payments, the noncommercial webcasters demonstrated that they were able and willing to pay the minimum fee. 5/18/10 Tr. at 33 (Kessler).

According to Ms. Kessler, SoundExchange does not track the administrative costs on a licensee, station, or channel basis in the ordinary course of business. 5/18/10 Tr. at 37 (Kessler). However, for this remand proceeding, SoundExchange estimated its administrative costs and found that the average per channel or station cost for webcasters for 2008 was $803. 5/18/10 Tr. at 36 (Kessler); Kessler Corrected WDT at 9–10. Further, Ms. Kessler testified that this average cost exceeded the average revenue derived by SoundExchange from noncommercial webcasters. 5/18/10 Tr. at 34 (Kessler).

Ms. Kessler testified that, for all licensees, regardless of size or classification, SoundExchange must perform certain basic processes to administer the collection and distribution of royalty fees related to use of sound recordings. She also testified that that there was no positive correlation between the volume of sound recordings performed by a station

[9] Frederick Kass is also retired from the United States Navy, having achieved the rank of Captain. Kass (Pre-remand) WDT ¶ 1. Accordingly, the Judges refer to him in this Determination as Captain Kass.

[10] Because the D.C. Circuit remanded for a determination of ''the issue of the appropriate minimum fee for noncommercials,'' the Judges construe the IBS proposal as a request for a minimum of fee of zero. The Judges do not reach the question whether a minimum fee of $0 could ever satisfy the statutory mandate to ''include a minimum fee for each . . . type of service. . . .'' 17 U.S.C. 114(f)(2)(B).

[11] Specifically—and separate and apart from the minimum fee issue—IBS also requested for these proposed new classes of noncommercial webcasters: *(1)* A new flat royalty *rate* of $50 per annum for the noncommercial webcasters IBS classified as ''Small''; *(2)* a new flat royalty *rate* of $20 per annum for the noncommercial webcasters IBS classified as ''Very Small''; and *(3)* new *terms* that would exempt both such proposed classes from recordkeeping and reporting requirements. *By seeking different royalty rates and terms, IBS has raised issues that go beyond the scope of the remand instructions.* Indeed, as the D.C. Circuit made clear, except for the minimum fee issue, *''[a]ll other portions of the determination are affirmed.''* 574 F.3d at 772 (emphasis added).

[12] The remaining 58 noncommercial webcasters also were charged the $500 minimum fee, but they recouped that minimum fee either because they exceeded the ATH threshold cap or because they streamed multiple channels or stations.

or channel and the administrative work required of SoundExchange, nor, as noted *supra,* was there a greater amount of time and effort expended to administer the licensing process for commercial webcasters compared to noncommercial webcasters.[13] In fact, as Ms. Kessler testified, SoundExchange ''at times has to devote more time to working with a noncommercial service than it would a commercial service, because of the small and often inexperienced staff and relative lack of automation in the operations of many noncommercial webcasters.'' Kessler Corrected WDT at 4.

Moreover, SoundExchange's additional documentary evidence regarding the minimum fee contained in other agreements was consistent with the use of the $500 minimum fee in this proceeding. All of the agreements filed pursuant to the Webcaster Settlement Acts of 2008 and 2009 and introduced into evidence by SoundExchange contained minimum fees similar to the $500 per station or channel proposed by SoundExchange. Of particular importance, one of those agreements was the agreement between SoundExchange and noncommercial educational webcasters (the CBI Agreement) for the same type of services as would be covered under the IBS proposal. More specifically, the CBI Agreement contains *the identical minimum fee of $500 per year per station or channel.* 5/18/10 Tr. at 14 (McCrady).

Mr. McCrady testified that this proposed $500 minimum fee represented a substantial discount for noncommercial webcasters. Specifically, Mr. McCrady testified that—with regard to *Commercial* Webcasters—WMG required that its negotiated voluntary licenses for its full catalogue must generate payments anticipated to be at least $25,000. 5/18/10 Tr. at 25 (McCrady), and the lowest commercial minimum fee is 20% of revenue. 5/18/10 Tr. at 20 (McCrady). On percentage terms, therefore, the $500 minimum fee would represent a substantial discount because—accepting *arguendo* IBS's assertion that the average annual operating budget of its member stations is $9,000, *see* 5/18/10 Tr. at 20 (McCrady) and 5/18/10 Tr. at 71 (Kass)—that proposed $500 minimum fee would be less than 6% of that amount.

2. IBS's Testimony and Evidence

IBS's primary contention to support a zero minimum fee for ''Small'''' and ''Very Small'' noncommercial webcasters is essentially that those entities are unable to afford the $500 minimum fee proposed by SoundExchange. 5/18/10 Tr. at 103 (Kass). More specifically, Capt. Kass testified that, according to a prior survey by IBS of its member stations—a survey undertaken ''back aways'' and not proffered by IBS—the average annual operating budget for those campus stations was approximately $9,000 per year. 5/18/10 Tr. at 71 (Kass); Kass (Pre-Remand) WDT at 9.

Messrs. Kass, Murphy, and Shaiken all testified about certain distinctions between college (and, to a lesser extent, high school) radio stations and commercial radio stations. Kass (Pre-Remand) WDT at ¶¶ 7–8; 10–13; 4/22/10 Tr. at 761, 765(Kass); Murphy WDT at ¶¶ 4–10; Shaiken WDT ¶¶ 5–9.[14] The gravamen of these asserted distinctions was that smaller webcasters affiliated with educational institutions have an instructional need for sound recordings that, according to IBS, must be distinguished from the demand of other webcasters, in a manner that would preclude any minimum fee.

However, the evidence and testimony introduced by IBS did not address the issue of whether SoundExchange incurred administrative costs in connection with licensing of sound recordings performed by academic institutions, or the dollar value of such administrative costs.

E. Analysis and Determination

The Judges concluded in the first remand that SoundExchange's $500 minimum fee proposal is clearly appropriate and eminently reasonable. The Judges in this remand reach the same conclusion and find several bases in the record for this conclusion.

First, *IBS did not proffer any evidence to contradict Ms. Kessler's testimony.* Accordingly, the Judges find as a fact that the cost to administer the statutory license, including for the noncommercial webcasters represented by IBS, is $803 per year on average. It is reasonable and appropriate for the minimum fee at least to cover SoundExchange's administrative cost. Moreover, as noted at the outset of this Determination, the D.C. Circuit expressly remanded the prior Determination with a directive that the Judges develop just such a record regarding SoundExchange's administrative costs, in order to ground a decision as to the minimum fee on evidentiary bases.[15]

Second, the CBI Agreement admitted into evidence is persuasive corroborating evidence. The CBI Agreement confirms that SoundExchange's proposal represents a minimum fee that has actually been *negotiated in the marketplace* between a willing buyer and a willing seller. The Judges further note that the negotiated CBI Agreement employs the same minimum fee per station or channel, up to the 159,140 ATH threshold, without the smaller sub-classifications proposed by IBS.

Third, the undisputed fact that 305 noncommercial webcasters paid the $500 minimum fee in 2009 is persuasive evidence that this minimum fee has not only been included in an agreement, but has *actually been paid in the marketplace.* Just as webcasting rates (beyond a minimum fee) must represent marketplace rates, so too should a statutory minimum fee bear a relationship to the minimum fees that actually are paid for similar services.

In stark contrast, the testimony and evidence proffered by IBS do not present any countervailing considerations.

First, IBS proffered no record evidence to support the contention that the ''Small'' or ''Very Small'' noncommercial webcasters as defined by IBS would be unable to pay a $500 minimum fee. Indeed, IBS did not offer testimony from any entity that demonstrably qualified as a ''Small'' or ''Very Small'' noncommercial webcaster. Mere conclusory statements that a $500 minimum payment would be unaffordable for smaller noncommercial webcasters do not serve as probative evidence.

Second, the only testimony that mentions any specifics about the

[13] According to Ms. Kessler, although the particular per channel or station costs deviate from the average (by definition, the value of each item within a heterogeneous set will deviate from the set's average value), those deviations are not a function of the classification of the service as commercial or noncommercial. Rather, those deviations are a function of the amount of ''time and attention'' required of SoundExchange to administer the license, which itself is a function of the quality of the data provided by the service operating the channel or station. 5/18/10 Tr. at 37–38 (Kessler).

[14] The written testimony of Messrs. Murphy and Shaiken were introduced previously in *Web III* on April 22, 2010, and were subsequently designated as evidence by IBS and admitted in the first *Web II* remand proceeding. 5/18/10 Tr. at 66–67.

[15] The Judges note that, as Mr. McCrady testified, generally, minimum fees ''are intended not only to cover our costs of negotiating and administering the license, but to assure that we will receive a substantial guaranteed stream of revenue for making available our large repertoire of sound recordings.'' McCrady WDT at 5. Although in the present proceeding the minimum fee has been based on the administrative costs incurred by SoundExchange, nothing set forth herein should be construed as precluding a minimum fee from also serving to guarantee a stream of revenue for licensees as appropriate in the particular proceeding.

finances of smaller webcasters is the reference by Capt. Kass to the survey performed ''back aways'' that supposedly showed that IBS members had an average annual operating budget of $9,000. Kass (Pre-Remand) WDT at ¶ 9. IBS did not offer that purported survey into evidence. Without documentary evidence that would allow the Judges to assess the validity of the survey, the Judges cannot accept Capt. Kass's reference to that survey as evidence. *See* 37 CFR 351.l0(e). Moreover, assuming *arguendo* the Judges could accept such a casual reference as probative, the assertion would not advance IBS's case. On its face, an assertion that the average operating budget for IBS members is $9,000 does not establish that its members lack the capacity to make a minimum payment of $500.

Third, the evidence strongly suggests that the ATH cutoffs that IBS proposed for ''Small'' and ''Very Small'' noncommercial webcasters are arbitrary. It appears that, for these proposed smaller categories, IBS chose ATH levels that represent 10% and 4%, respectively, of the ATH cutoff (159,400 ATH) for all noncommercial webcasters contained in SoundExchange's rate proposal. *IBS's Restated Rate Proposal* (June 1, 2010). Nothing in the record substantiates these ATH levels as probative of the ability, *vel non,* of a noncommercial webcaster to pay a $500 minimum fee.

Fourth, even if there were a sufficient basis in the record to conclude that ''Small'' and/or ''Very Small'' noncommercial webcasters were unable to pay a $500 minimum fee, that alone would not demonstrate that a willing seller in a hypothetical marketplace would be prepared to offer a lower minimum fee. That proposition is particularly dubious in this proceeding given the evidence in the record (discussed *supra*) that SoundExchange's average annual administrative cost exceeds $500 per station or channel.

Fifth, the particular economic circumstances of the academic webcasters represented by IBS are germane *only* to the determination of the statutory royalty rate that they are required to pay—a royalty determination previously rendered by the Judges and affirmed by the D.C. Circuit. Indeed, the prior Determination by the Judges, affirmed by the D.C. Circuit, acknowledged the appropriateness of lower *rates* for noncommercial webcasters compared to the rates set for commercial webcasters. The issue at hand on this remand is different—whether there should be a distinction regarding the *minimum fee*—not the royalty rate—among different groups *within* the category of noncommercial webcasters.[16]

Finally, the testimony of the IBS witnesses regarding the nature of the use of sound recordings [17] by academic institutions is not pertinent to the setting of the minimum fee based on SoundExchange's administrative costs. That is, payment of a minimum fee of zero, and indeed any minimum fee significantly below SoundExchange's actual administrative costs, would provide a webcaster with an unjustified free ride [18] in terms of the cost of administering the license, because SoundExchange incurs that cost *regardless of the nature of the use of the sound recording.*[19]

[16] The contrast between the *economic* value of a sound recording and the *economic* value of administrative services is instructive in this regard. Administrative services, like any private services or goods, are priced in a market at a level that permits the seller to recover at least its average variable cost of providing those services. By contrast, the marginal cost of producing an additional copy of a sound recording is essentially zero, so the determination of the price for the sound recording, on the supply side, is influenced by that economic fact (and by the recurring sinking of long-term costs to create the recording and the need to provide an incentive for the creation of future sound recordings). Noncommercial webcasters might have been able to argue for *a different or lower royalty rate* based on this economic argument, but the Judges cannot apply this principle to the valuation of a service, such as the provision of administrative functions that, like all private goods or services, are provided at a positive marginal cost.

[17] Pursuant to 17 U.S.C. 114(f)(2)(B), the Judges can identify and then account for those differences in the ''nature of the use of sound recordings'' that would support a different rate or term.

[18] ''Small'' and ''Very Small'' noncommercial webcasters would obtain a free ride under the IBS proposal because they receive benefits from SoundExchange's administrative services. As explained by Mr. McCrady, rather than having to negotiate licenses with individual copyright owners in a market without a statutory license, noncommercial webcasters enjoy ''one-stop shopping'' for rights to all recordings at a pre-established price. McCrady WDT at 11.

[19] The Judges do not rely upon Mr. McCrady's testimony regarding the nature of the use of the sound recordings by academic institutions. He testified that the $500 minimum fee is appropriate because it provides an important educational message for students regarding the value of recorded music and the need to pay for it. 5/18/10 Tr. at 23 (McCrady). Mr. McCrady did not purport to be an educator, he did not claim any direct knowledge of the scope or content of the educational work undertaken by academic institutions that authorize their students to play sound recordings, and SoundExchange did not proffer evidence to indicate that Mr. McCrady possessed the competency to testify as to any relationship between the educational mission of these institutions and the establishment of a minimum fee. Although such a ''message'' might well be appropriate as part of an economics or business school class or internship, that message might not be part of the curriculum in a music or communications class or internship. Further, a student's understanding of the economic issues regarding the pricing of sound recordings cannot be imparted in such an *ad hoc* manner.

IV. Conclusion

For the foregoing reasons, developed from a *de novo* review of the record, the Judges conclude that the $500 minimum fee proposed by SoundExchange for all noncommercial webcasters for the license term 2006 through 2010 is appropriate and consistent with the relevant willing buyer/willing seller statutory standard. The Judges hereby expressly adopt the same minimum fee as set forth in the Final Determination published on May 1, 2007, and the Order on Remand. See 37 CFR 380.3(b)(2). The Judges also conclude that IBS failed to support the zero minimum fee that it proposed for sub-categories of noncommercial webcasters, either with relevant evidence or economic analysis consistent with the applicable statutory standard.

September 17, 2014.

So Ordered.

Suzanne M. Barnett,

Chief United States Copyright Royalty Judge.

David R. Strickler,

United States Copyright Royalty Judge.

Jesse M. Feder,

United States Copyright Royalty Judge.

Dated: October 22, 2014.

Suzanne M. Barnett,

Chief United States Copyright Royalty Judge.

Approved by:

James H. Billington,

Librarian of Congress.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2014–0467; FRL–9917–03]

AAAPD and AAASD; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of α-alkyl (minimum C6 linear, branched, saturated and/or unsaturated)-ω-hydroxypolyoxyethylene polymer with or without polyoxypropylene, mixture of di- and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; minimum oxyethylene content is 2

moles; minimum oxypropylene content is 0 moles, herein referred to as alkyl alcohol alkoxylate phosphate derivatives (AAAPD) and α-alkyl(C6-C15)-ω-hydroxypoly(oxyethylene)sulfate, and its ammonium, calcium, magnesium, potassium, sodium, and zinc salts, poly(oxyethylene) content averages 2–4 moles, herein referred to alkyl alcohol alkoxylate sulfate derivatives (AAASD) to include Chemical Abstract Service Registry Numbers listed in the Supplementary Information when used as an inert ingredient in a pesticide chemical formulation. Spring Trading Company, LLC., on behalf of Croda Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of alkyl alcohol alkoxylate phosphate and sulfate derivatives on food or feed commodities.

DATES: This regulation is effective October 31, 2014. Objections and requests for hearings must be received on or before December 30, 2014, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2014–0467, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

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

C. Can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2014–0467 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before December 30, 2014. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2014–0467, by one of the following methods.

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

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

II. Petition for Exemption

In the **Federal Register** of July 29, 2009 (74 FR 37571) (FRL–8424–6), EPA issued a Final Rule, announcing the establishment of a tolerance exemption pursuant to a pesticide petition (PP 9E7533) by the Joint Inerts Task Force (JITF) Cluster Support Team Number 2 (CST 2) c/o CropLife America, 1156 15th Street NW., Suite 400, Washington, DC 20005. The petition requested that 40 CFR 180.910, 40 CFR 180.920, and 40 CFR 180.930 be amended by establishing exemptions from the requirement of a tolerance for residues of a group of substances known as alkyl alcohol alkoxylate phosphate and sulfate derivatives. The exemptions narratively describe the subject chemical as α-alkyl (minimum C6 linear, branched, saturated and/or unsaturated)-ω-hydroxypolyoxyethylene polymer with or without polyoxypropylene, mixture of di- and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; minimum oxyethylene content is 2 moles; minimum oxypropylene content is 0 moles and α-alkyl (C6–C15)-ω hydroxypoly(oxyethylene)sulfate, and its ammonium, calcium, magnesium, potassium, sodium, and zinc salts, poly(oxyethylene) content averages 2–4 moles.

In the **Federal Register** of August 20, 2010 (75 FR 51382) (FRL–8836–5), EPA issued a Final Rule, announcing the establishment of a tolerance exemption pursuant to a pesticide petition (PP 9E7628) by the JITF CST 2 c/o CropLife America, 1156 15th Street NW., Suite 400, Washington, DC 20005. The petition requested that 40 CFR 180.910 and 40 CFR 180.930 be amended by establishing an exemption from the requirement of a tolerance for residues of a group of substances known as AAAPD.

In the **Federal Register** of February 21, 2014 (79 FR 9856) (FRL–9906–24) EPA issued a Final Rule, announcing

the establishment of a tolerance exemption pursuant to a pesticide petition (PP 2E8092) by JITF CST2, c/o Huntsman Corp., 8600 Gosling Rd., The Woodlands, TX 77381. The petition requested that 40 CFR 180.910 and 40 CFR 180.930 be amended by establishing an exemption from the requirement of a tolerance for residues of a group of substances known as AAAPD and AAASD.

The current petition seeks to expand the exemptions for AAAPD and AAASD by adding additional chemicals identified by CAS Reg. Nos. in the **Federal Register** of September 5, 2014 (79 FR 53012) (FRL–9914–98), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP IN–10690) filed by Spring Trading Company, LLC., 10805 W. Timberwagon Circle, Spring, Texas 77380 on behalf of Croda Inc., 315 Cherry Lane, New Castle, DE 19720 for post-harvest use on agricultural crops under 40 CFR § 180.910 and when applied to animals under 40 CFR 180.930 for the following used as surfactants not to exceed 30% of pesticide formulation to include CAS Reg. No. 3694–74–4, 37281–86–0, 9086–52–6, 51325–10–1, 52019–38–2, 52019–38–2, 58206–38–5, 58857–49–1, 62482–61–5, 63887–54–7, 66020–37–9, 66281–20–7, 68332–75–2, 68400–75–9, 70844–96–1, 78041–18–6, 82465–25–6, 84843–37–8, 95014–34–9, 99924–51–3, 120913–45–3, 123339–53–7, 129208–04–4, 144336–75–4, 146815–57–8, 151688–56–1, 15826–16–1, 159704–69–5, 172027–16–6, 172274–69–0, 176707–42–9, 181963–82–6, 188741–55–1, 191940–53–1, 210993–53–6, 25446–78–0, 27731–61–9, 290348–69–5, 290348–70–8, 340681–28–9, 422563–26–6, 522613–09–8, 55901–67–2, 61894–66–4, 63428–85–3, 65104–74–7, 65122–38–5, 67762–19–0, 67762–21–4, 67923–90–4, 68611–29–0, 717140–06–2, 717140–09–5, 717827–29–7, 762245–80–7, 762245–81–8, 866538–89–8, 866538–90–1, 913068–96–9, 1087209–87–7, 1174313–54–2, 119432–41–6, 1205632–03–6, 1233235–49–8, 1451002–50–8, 1456802–88–2, 1456802–89–3, 1456803–12–5, and 219756–63–5. That document included a summary of the petition prepared by the petitioner, which is available in the docket, *http://www.regulations.gov,* and solicited comments on the petitioner's request. The Agency did not receive any comments.

Based upon review of the data supporting the petition, EPA has confirmed that the requested CAS Reg. Nos. are acceptable for consideration under the currently approved descriptor. This limitation is based on the Agency's risk assessment which can be found at *http://www.regulations.gov* in document PP 2E8092 entitled ''Alkyl Alcohol Alkoxylate Phosphate and Sulfate Derivatives (Multiple CAS #s): Request to amend existing tolerance exemptions under 40 CFR 180.910 and 180.930'' in docket ID number EPA–HQ–OPP–2012–0862.

III. Risk Assessment and Statutory Findings

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

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

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for AAAPD and AAASD including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with AAAPD and AAASD follows.

The Agency agrees with the petitioner that CAS Reg. No.: 3694–74–4, 37281–86–0, 9086–52–6, 51325–10–1, 52019–38–2, 52019–38–2, 58206–38–5, 58857–49–1, 62482–61–5, 63887–54–7, 66020–37–9, 66281–20–7, 68332–75–2, 68400–75–9, 70844–96–1, 78041–18–6, 82465–25–6, 84843–37–8, 95014–34–9, 99924–51–3, 120913–45–3, 123339–53–7, 129208–04–4, 144336–75–4, 146815–57–8, 151688–56–1, 15826–16–1, 159704–69–5, 172027–16–6, 172274–69–0, 176707–42–9, 181963–82–6, 188741–55–1, 191940–53–1, 210993–53–6, 25446–78–0, 27731–61–9, 290348–69–5, 290348–70–8, 340681–28–9, 422563–26–6, 522613–09–8, 55901–67–2, 61894–66–4, 63428–85–3, 65104–74–7, 65122–38–5, 67762–19–0, 67762–21–4, 67923–90–4, 68611–29–0, 717140–06–2, 717140–09–5, 717827–

29–7, 762245–80–7, 762245–81–8, 866538–89–8, 866538–90–1, 913068–96–9, 1087209–87–7, 1174313–54–2, 119432–41–6, 1205632–03–6, 1233235–49–8, 1451002–50–8, 1456802–88–2, 1456802–89–3, 1456803–12–5, and 219756–63–5 are AAAPD and AAASD similar to those present in the existing exemption. In 2009, in establishing the exemption for the AAAPD and AAASD, EPA assessed their safety generally using worst case exposure assumptions (74 FR 37571) (FRL–8424–6). EPA concluded that that assessment showed that exempting AAAPD and AAASD from the requirement from a tolerance would be safe. Inclusion of additional chemicals described above in the risk assessment for the AAAPD and AAASD would in no way alter that prior risk assessment given the generic findings on toxicity and the worst case exposure assumptions used in that risk assessment. Accordingly, based on the findings in that earlier rule, EPA has determined that there is a reasonable certainty that no harm to any population subgroup, including infants and children, will result from aggregate exposure to AAAPD and AAASD, by including the additional chemicals described above, under reasonably foreseeable circumstances. Therefore, the amendment of an exemption from tolerance under 40 CFR 180.910 and 180.930, for residues of AAAPD and AAASD to include the chemicals described above is safe under FFDCA section 408.

IV. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

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

The Codex has not established a MRL for AAAPD and AAASD.

V. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.910 and 180.930 for AAAPD and AAASD when used as an inert ingredient for post-harvest use on agricultural crops under 40 CFR 180.910 and when applied to animals under 40 CFR 180.930 used as surfactants not to exceed 30% of pesticide formulation.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these rules from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

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

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

Although this action does not require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994), EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. As such, to the extent that information is publicly available or was submitted in comments to EPA, the Agency considered whether groups or segments of the population, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: October 24, 2014.

Susan Lewis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.910, the table is amended by revising the following inert ingredients to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * * *	* *	*
α-alkyl(C6- C15)-ω-hydroxypoly(oxyethylene)sulfate, and its ammonium, calcium, magnesium, potassium, sodium, and zinc salts, poly(oxyethylene) content averages 2–4 moles (CAS Reg. Nos.: 3088–31–1, 3694–74–4, 9004–82–4, 9004–84–6, 9021–91–4, 9086–52–6, 13150–00–0, 15826–16–1, 25446–78–0, 26183–44–8, 27140–00–7, 27731–62–0, 32612–48–9, 34431–25–9, 35015–74–8, 50602–06–7, 52286–18–7, 52286–19–8, 54116–08–4, 55901–67–2, 61702–79–2, 61894–66–4, 62755–21–9, 63428–85–3, 63428–86–4, 63428–87–5, 65086–57–9, 65086–79–5, 65104–74–7, 65122–38–5, 67674–66–2, 67762–19–0, 67762–21–4, 67845–82–3, 67845–83–4, 67923–90–4, 68037–05–8, 68037–06–9, 68171–41–5, 68424–50–0, 68511–39–7, 68585–34–2, 68610–66–2, 68611–29–0, 68611–55–2, 68649–53–6, 68890–88–0, 68891–29–2, 68891–30–5, 68891–38–3, 69011–37–6, 73665–22–2, 75422–21–8, 78330–16–2, 78330–17–3, 78330–25–3, 78330–26–4, 78330–27–5, 78330–28–6, 78330–29–7, 78330–30–0, 96130–61–9, 106597–03–9, 110392–50–2, 119432–41–6, 125301–88–4, 125301–89–5, 125301–92–0, 125736–54–1, 157707–85–2, 160104–51–8, 160901–27–9, 160901–28–0, 160901–29–1, 160901–30–4, 161025–28–1, 161074–79–9, 162063–19–6, 219756–63–5).	Not to exceed 30% of formulation.	Surfactants, related adjuvants of surfactants.
* * * *	* *	*
α-alkyl (minimum C6 linear, branched, saturated and/or unsaturated)-ω-hydroxypolyoxyethylene polymer with or without polyoxypropylene, mixture of di- and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; minimum oxyethylene content is 2 moles; minimum oxypropylene content is 0 moles (CAS Reg. Nos.: 9004–80–2, 9046–01–9, 26982–05–8, 31800–89–2, 37280–82–3, 37281–86–0, 39341–09–8, 39341–65–6, 39464–66–9, 39464–69–2, 42612–52–2, 50643–20–4, 50668–50–3, 51325–10–1, 51884–64–1, 52019–36–0, 57486–09–6, 58206–38–5, 58318–92–6, 58857–49–1, 59112–71–9, 60267–55–2, 61837–79–4, 62362–49–6, 62482–61–5, 63747–86–4, 63887–54–7, 63887–55–8, 66020–37–9, 66272–25–1, 66281–20–7, 67711–84–6, 67786–06–5, 67989–06–4, 68070–99–5, 68071–17–0, 68071–35–2, 68071–37–4, 68130–44–9, 68130–45–0, 68130–46–1, 68130–47–2, 68186–29–8, 68186–34–5, 68186–36–7, 68186–37–8, 68238–84–6, 68311–02–4, 68311–04–6, 68332–75–2, 68389–72–0, 68400–75–9, 68413–78–5, 68425–73–0, 68425–75–2, 68439–39–4, 68458–48–0, 68511–15–9, 68511–36–4, 68511–37–5, 68551–05–3, 68585–15–9, 68585–16–0, 68585–17–1, 68585–36–4, 68585–39–7, 68603–24–7, 68607–14–7, 68610–64–0, 68610–65–1, 68649–29–6, 68649–30–9, 68650–84–0, 68815–11–2, 68855–46–9, 68856–03–1, 68890–90–4, 68890–91–5, 68891–12–3, 68891–13–4, 68891–26–9, 68908–64–5, 68909–65–9, 68909–67–1, 68909–69–3, 68921–24–4, 68921–60–8, 68954–87–0, 68954–88–1, 68954–92–7, 68987–35–9, 69029–43–2, 69980–69–4, 70247–99–3, 70248–14–5, 70844–96–1, 70903–63–8, 71965–23–6, 71965–24–7, 72480–27–4, 72623–67–7, 72623–68–8, 72828–56–9, 72828–57–0, 73018–34–5, 73038–25–2, 73050–08–5, 73050–09–6, 73361–29–2, 73378–71–9, 73378–72–0, 73559–42–9, 73559–43–0, 73559–44–1, 73559–45–2, 74499–76–6, 76930–25–1, 78041–18–6, 78330–22–0, 78330–24–2, 82465–25–6, 84843–37–8, 91254–26–1, 93925–54–3, 95014–34–9, 96416–89–6, 99924–51–3, 103170–31–6, 103170–32–7, 106233–09–4, 106233–10–7, 108818–88–8, 110392–49–9, 111798–26–6, 111905–50–1, 116671–23–9, 117584–36–8, 119415–05–3, 120913–45–3, 121158–61–0, 121158–63–2, 123339–53–7, 125139–13–1, 125301–86–2, 125301–87–3, 126646–03–5, 129208–04–4, 129870–77–5, 129870–80–0, 130354–37–9, 136504–88–6, 143372–50–3, 143372–51–4, 144336–75–4, 146815–57–8, 151688–56–1, 154518–39–5, 154518–40–8, 155240–11–2, 159704–69–5, 160498–49–7, 160611–24–5, 171543–66–1, 172027–16–6, 172274–69–0, 176707–42–9, 181963–82–6, 188741–55–1, 191940–53–1, 210493–60–0, 210993–53–6, 246159–55–7, 251298–11–0, 261627–68–3, 290348–69–5, 290348–70–8, 317833–96–8, 340681–28–9 , 422563–19–7, 422563–26–6, 522613–09–8, 717140–06–2, 717140–09–5, 717827–29–7, 762245–80–7, 762245–81–8, 866538–89–8, 866538–90–1, 873662–29–4, 913068–96–9, 936100–29–7, 936100–30–0, 1072943–56–6, 1087209–87–7, 1174313–54–2, 1187742–89–7, 1187743–35–6, 1205632–03–6, 1233235–49–8, 1451002–50–8, 1456802–88–2, 1456802–89–3, 1456803–12–5).	Not to exceed 30% of formulation.	Surfactants, related adjuvants of surfactants.
* * * *	* *	*

■ 3. In § 180.930, the table is amended by revising the following inert ingredients to read as follows:

§ 180.930 Inert ingredients applied to animals; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * * *	* *	*
α-alkyl (minimum C6 linear, branched, saturated and/or unsaturated)-ω-hydroxypolyoxyethylene polymer with or without polyoxypropylene, mixture of di- and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, monoethanolamine, potassium, sodium, and zinc salts of the phosphate esters; minimum oxyethylene content is 2 moles; minimum oxypropylene content is 0 moles, (CAS Reg. Nos.: 9004–80–2, 9046–01–9, 26982–05–8, 31800–89–2, 37280–82–3, 37281–86–0, 39341–09–8, 39341–65–6, 39464–66–9, 39464–69–2, 42612–52–2, 50643–20–4, 50668–50–3, 51325–10–1, 51884–64–1, 52019–36–0, 52019–38–2, 52019–38–2, 57486–09–6, 58206–38–5, 58318–92–6, 58857–49–1, 59112–71–9, 60267–55–2, 61837–79–4, 62362–49–6, 62482–61–5, 63747–86–4, 63887–54–7, 63887–55–8, 66020–37–9, 66272–25–1, 66281–20–7, 67711–84–6, 67786–06–5, 67989–06–4, 68070–99–5, 68071–17–0, 68071–35–2, 68071–37–4, 68130–44–9, 68130–45–0, 68130–46–1, 68130–47–2, 68186–29–8, 68186–34–5, 68186–36–7, 68186–37–8, 68238–84–6, 68311–02–4, 68311–04–6, 68332–75–2, 68389–72–0, 68400–75–9, 68413–78–5, 68425–73–0, 68425–75–2, 68439–39–4, 68458–48–0, 68511–15–9, 68511–36–4, 68511–37–5, 68551–05–3, 68585–15–9, 68585–16–0, 68585–17–1, 68585–36–4, 68585–39–7, 68603–24–7, 68607–14–7, 68610–64–0, 68610–65–1, 68649–29–6, 68649–30–9, 68650–84–0, 68815–11–2, 68855–46–9, 68856–03–1, 68890–90–4, 68890–91–5, 68891–12–3, 68891–13–4, 68891–26–9, 68908–64–5, 68909–65–9, 68909–67–1, 68909–69–3, 68921–24–4, 68921–60–8, 68954–87–0, 68954–88–1, 68954–92–7, 68987–35–9, 69029–43–2, 69980–69–4, 70247–99–3, 70248–14–5, 70844–96–1, 70903–63–8, 71965–23–6, 71965–24–7, 72480–27–4, 72623–67–7, 72623–68–8, 72828–56–9, 72828–57–0, 73018–34–5, 73038–25–2, 73050–08–5, 73050–09–6, 73361–29–2, 73378–71–9, 73378–72–0, 73559–42–9, 73559–43–0, 73559–44–1, 73559–45–2, 74499–76–6, 76930–25–1, 78041–18–6, 78330–22–0, 78330–24–2, 82465–25–6, 84843–37–8, 91254–26–1, 93925–54–3, 95014–34–9, 96416–89–6, 99924–51–3, 103170–31–6, 103170–32–7, 106233–09–4, 106233–10–7, 108818–88–8, 110392–49–9, 111798–26–6, 111905–50–1, 116671–23–9, 117584–36–8, 119415–05–3, 120913–45–3, 121158–61–0, 121158–63–2, 123339–53–7, 125139–13–1, 125301–86–2, 125301–87–3, 126646–03–5, 129208–04–4, 129870–77–5, 129870–80–0, 130354–37–9, 136504–88–6, 143372–50–3, 143372–51–4, 144336–75–4, 146815–57–8, 151688–56–1, 154518–39–5, 154518–40–8, 155240–11–2, 159704–69–5, 160498–49–7, 160611–24–5, 171543–66–1, 172027–16–6, 172274–69–0, 176707–42–9, 181963–82–6, 188741–55–1, 191940–53–1, 210493–60–0, 210993–53–6, 246159–55–7, 251298–11–0, 261627–68–3, 290348–69–5, 290348–70–8, 317833–96–8, 340681–28–9, 422563–19–7, 422563–26–6, 522613–09–8, 717140–06–2, 717140–09–5, 717827–29–7, 762245–80–7, 762245–81–8, 866538–89–8, 866538–90–1, 873662–29–4, 913068–96–9, 936100–29–7, 936100–30–0, 1072943–56–6, 1087209–87–7, 1174313–54–2, 1187742–89–7, 1187743–35–6, 1205632–03–6, 1233235–49–8, 1451002–50–8, 1456802–88–2, 1456802–89–3, 1456803–12–5).	Not to exceed 30% of formulation.	Surfactants, related adjuvants of surfactants.
* * * *	* *	*
α-alkyl(C6- C15)-ω-hydroxypoly(oxyethylene)sulfate, and its ammonium, calcium, magnesium, potassium, sodium, and zinc salts, poly(oxyethylene) content averages 2–4 moles (CAS Reg. Nos.: 3088–31–1, 3694–74–4, 9004–82–4, 9004–84–6, 9021–91–4, 9086–52–6, 13150–00–0, 15826–16–1, 25446–78–0, 26183–44–8, 27140–00–7, 27731–61–9, 27731–61–9, 27731–62–0, 32612–48–9, 34431–25–9, 35015–74–8, 50602–06–7, 52286–18–7, 52286–19–8, 54116–08–4, 55901–67–2, 61702–79–2, 61894–66–4, 62755–21–9, 63428–85–3, 63428–86–4, 63428–87–5, 65086–57–9, 65086–79–5, 65104–74–7, 65122–38–5, 67674–66–2, 67762–19–0, 67762–21–4, 67845–82–3, 67845–83–4, 67923–90–4, 68037–05–8, 68037–06–9, 68171–41–5, 68424–50–0, 68511–39–7, 68585–34–2, 68610–66–2, 68611–29–0, 68611–55–2, 68649–53–6, 68890–88–0, 68891–29–2, 68891–30–5, 68891–38–3, 69011–37–6, 73665–22–2, 75422–21–8, 78330–16–2, 78330–17–3, 78330–25–3, 78330–26–4, 78330–27–5, 78330–28–6, 78330–29–7, 78330–30–0, 96130–61–9, 106597–03–9, 110392–50–2, 119432–41–6, 125301–88–4, 125301–89–5, 125301–92–0, 125736–54–1, 157707–85–2, 160104–51–8, 160901–27–9, 160901–28–0, 160901–29–1, 160901–30–4, 161025–28–1, 161074–79–9, 162063–19–6, 219756–63–5).	Not to exceed 30% of formulation.	Surfactants, related adjuvants of surfactants.
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BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R06–RCRA–2014–0366; FRL–9918–56–Region 6]

Arkansas: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The State of Arkansas has applied to the EPA for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this direct final action. The EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we receive written comments which oppose this authorization during the comment period, the decision to authorize Arkansas' changes to its hazardous waste program will take effect. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This final authorization will become effective on December 30, 2014 unless the EPA receives adverse written comment by December 1, 2014. If the EPA receives such comment, it will publish a timely withdrawal of this direct final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Submit your comments by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *Email: patterson.alima@epa.gov.*

3. *Mail:* Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

4. *Hand Delivery or Courier.* Deliver your comments to Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

Instructions: Do not submit information that you consider to be CBI or otherwise protected through regulations.gov, or email. The Federal regulations.gov Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. You can view and copy Arkansas' application and associated publicly available materials from 8:30 a.m. to 4 p.m. Monday through Friday at the following locations: Arkansas Department of Environmental Quality, 8101 Interstate 30, Little Rock, Arkansas 72219–8913, (501) 682–0876, and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone number (214) 665–8533. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, (214) 665–8533, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, and Email address *patterson.alima@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why are revisions to State programs necessary?

States which have received final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask the EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273, and 279.

B. What decisions have we made in this rule?

We conclude that Arkansas' application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Arkansas Final authorization to operate its hazardous waste program with the changes described in the authorization application. Arkansas has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that the EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in Arkansas including issuing permits, until the State is granted authorization to do so.

C. What is the effect of today's authorization decision?

The effect of this decision is that a facility in Arkansas is subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. The State of Arkansas has enforcement responsibilities under its State hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements and suspend or revoke permits and
- Take enforcement actions after notice to and consultation with the State.

This action does not impose additional requirements on the regulated community because the regulations for which Arkansas is being authorized by today's action is already effective under State law, and are not changed by today's action.

D. Why wasn't there a proposed rule before today's rule?

The EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What happens if the EPA receives comments that oppose this action?

If the EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time. If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw only that part of this rule, but the authorization of the program changes that the comments do not oppose will become effective on the date specified in this document. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. For what has Arkansas previously been authorized?

Arkansas initially received final authorization on January 25, 1985, (50 FR 1513) to implement its Base Hazardous Waste Management program. Arkansas received authorization for revisions to its program on January 11,

1985 (50 FR 1513), effective January 25, 1985; March 27, 1990 (55 FR 11192) effective May 29, 1990; September 18, 1991 (56 FR 47153) effective November 18, 1991; October 5, 1992 (57 FR 45721) effective December 4, 1992; October 7, 1994 (59 FR 51115) effective December 21, 1994, April 24, 2002 (67 FR 20038) effective June 24, 2002, August 15, 2007 (72 FR 45663) effective October 15, 2007 and August 10, 2012 (77 FR 47779–47782) effective October 9, 2012. The authorized Arkansas RCRA program was incorporated by reference into the Code of Federal Regulations effective December 13, 1993 (58 FR 52674) June 28, 2010 (75 FR 36538) effective August 27, 2010 and August 10, 2012 (77 FR 47779) effective October 9, 2012. On January 14, 2014, Arkansas submitted a final complete program revision application seeking authorization of its program revision in accordance with 40 CFR 271.21.

G. What changes are we approving with today's action?

On January 14, 2014, the State of Arkansas submitted final complete program applications, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make a direct final decision, subject to receipt of written comments that oppose this action that the State of Arkansas' hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. The EPA wants to clarify in this **Federal Register** document that because of the Federal government's special role in matters of foreign policy, Organization for Economic Cooperation and Development (OECD), Requirements; Export Shipments of Spend Lead-Acid Batteries (Checklist 222), EPA does not authorize States to administer Federal import/export functions in any section of the RCRA hazardous waste regulations. Although States do not receive authorization to administer the Federal government's export functions in 40 CFR part 262, subpart E, import functions in 40 CFR part 262, subpart F, import/export functions in 40 CFR part 262, subpart H, or the import/export related functions in any other section of the RCRA hazardous waste regulations, State programs are still required to adopt those provisions that are more stringent than existing federal requirements to maintain their equivalency with the federal program. The OECD requirements are enforced by EPA in lieu of the State. Therefore, the State is not authorized for this provision. The State of Arkansas revisions consist of regulations which specifically govern Federal Hazardous waste revisions promulgated between July 1, 2005 through June 30, 2011 (and portions of RCRA Clusters XVI, XVII, XVIII, XX and XXI). Arkansas requirements are included in a chart with this document.

Description of federal requirement (include checklist #, if relevant)	**Federal Register** date and page (and/or RCRA statutory authority	Analogous state authority
1. Universal Waste Rule: Specific Provisions for Mercury Containing Equipment. (Checklist 209).	70 FR 45508–45522 August 5, 2005.	Arkansas Code of 1987 Annotated (A.C.A.) Sections 8–7–201 through 8–7–226. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, Hazardous Waste Management (HWM) Sections 260.10 ''Mercury containing equipment'', 260.10 ''Universal Waste'', 261.9(c), 264.1(g)(11)(iii), 265.1(c)(14)(iii), 268.1(f)(3), 270.1(c)(2)(viii)(C), 273.1(a)(3), 273.4(b)(1)–(3), 273.4(c)(1), 273.4(c)(2), 273.9 ''Ampule'', 273.9 ''Large Quantity Handler of Universal Waste'', 273.9 ''Mercury containing device'', 273.9 ''Small Quantity Handler of Universal Waste'', 273.9 ''Universal Waste'', 273.13(c) introductory paragraph, 273.13(c)(1), 273.13(c)(2) introductory paragraph, 273.13(c)(2)(i)–(viii), 273.13(c)(3) introductory paragraph, 273.13(c)(3)(i)–(ii), 273.13(c)(4)(i) introductory paragraph, 273.13(c)(4)(i)(A)–(B), 273.13(c)(4)(ii)–(iii), 273.14(d)(1), 273.14(d)(2), 273.32(b)(4)–(5), 273.33(c) introductory paragraph, 273.33(c)(1), 273.33(c)(2) introductory paragraph, 273.33(c)(2)(i)–(ii), 273.33(c)(2)(iii)–(viii), 273.33(c)(3) introductory paragraph, 273.33(c)(3)(i)–(ii), 273.33(c)(4)(i) introductory paragraph, 273.33(c)(4)(i)(A)–(B), 273.33(c)(4)(ii)–(iii), 273.34(d)(1), 273.34(d)(2), as adopted June 22, 2012, effective August 12, 2012.
2. NESHAP: Final Standards for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II). (Checklist 212).	70 FR 59402–59579 October 12, 2005.	Arkansas Code of 1987 Annotated (A.C.A.) Sections 8–7–201 through 8–7–226. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, Hazardous Waste Management (HWM) Sections 260.11(a), 260.11(c)(1), 264.340(b)(1), 265.340(b)(1), 266.100(b)(1), 266.100(b)(3), 266.100(b)(3)(i)–(ii), 266.100(b)(3)(iii), 266.100(b)(4), 270.6(a), 270.6(b) introductory paragraph, 270.6(b)(1), 270.6(b)(2), 270.10(n) introductory paragraph, 270.10(n), 270.10(n)(1)(i)–(ix), 270.10(n)(2), 270.19(e), 270.22 introductory paragraph, 270.24(d)(3), 270.25(e)(3), 270.32(b)(3), 270.42(j)(1)–(3), 270.42(k)(1) introductory paragraph, 270.42(k)(1)(i)–(iv), 270.42(k)(2) introductory paragraph, 270.42(k)(2)(i)–(ii), 270.42, Appendix I Item L.10, 270.62 introductory, 270.66 introductory paragraph, 270.235(a)(1) introductory paragraph, 270.235(a)(2) introductory paragraph, 270.235(b)(1) introductory paragraph, 270.235(b)(2) introductory paragraph, 270.235(c) introductory paragraph, 270.235(c)(1)–(2), as adopted June 22, 2012 and effective August 12, 2012.
3. Cathode Ray Tubes Rule. (Checklist 215).	71 FR 42928–42949 July 28, 2006.	Arkansas Code of 1987 Annotated (A.C.A.) Sections 8–7–201 through 8–7–226. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, Hazardous Waste Management (HWM) Sections 260.10 ''Cathode ray tube'', ''CRT collector'', ''CRT glass manufacturer'', ''CRT processing'', 261.4(a)(22)(i)–(iv), 261.38, 261.39, 261.40, 261.41, as adopted June 22, 2012, effective August 12, 2012.
4. OECD Requirements, Export Shipments of Spent Lead-Acid Batteries. (Checklist 222).	75 FR 1236–1262 January 8, 2010.	Arkansas Code of 1987 Annotated (A.C.A.) Sections 8–7–201 through 8–7–226. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, Hazardous Waste Management (HWM) Sections 262.10(d), 262.55 introductory paragraph, 262.58(a), 262.58(a)(1)–(2), 262.58(b), 262.80(a), 262.80(a)(1)–(2), 262.80(b), 262.81 ''Competent authority'' 262.81 ''Countries concerned'', 262.81 ''Country of export, 262.81 ''Country of import, 262.81 ''Country of transit'', 262.81 ''Exporter'', 262.81 ''Importer'', 262.81 OECD area'', 262.81 ''OECD'', 262.81 ''Recognized trader'', 262.81 ''Recovery facility'', 262.81 ''Recovery operations'', 262.81 ''Transboundary movement'', 262.82(a), 262.82(a)(1), 262.82(a)(1)(i)–(ii), 262.82(a)(2), 262.82(a)(2)(i)–(ii), 262.82(a)(2)(ii)(A), 262.82(a)(2)(ii)(B), 262.82(a)(2)(iii), Note to Paragraph (a)(2), 262.82(a)(3), 262.82(a)(3)(i), Note to Paragraph (a)(3)(i), 262.82(a)(3)(ii), Note to Paragraph (a)(3)(ii), 262.82(a)(4), 262.82(a)(4)(i)–(ii), 262.82(b), 262.82(b)(1)–(2), Note to Paragraph (b)(2), 262.82(b)(3), 262.82(c), 262.82(c)(1), 262.82(c)(1)(i)–(ii), 262.82(c)(2), 262.82(d), 262.82(d)(1)–(2), 262.82(e), 262.82(e)(1), 262.82(e)(2), 262.82(f), 262.82(f)(1)–(5), 262.82(f)(5)(i) and (ii), 262.82(g), 262.83(a), 262.83(b), 262.83(b)(1), 262.83(b)(1)(i)–(ii), 262.83(b)(1)(iii), 262.83(b)(2), 262.83(b)(2)(i)–(ii), 262.83(c), 262.83(d), 262.83(d)(1)–(14), Note to Paragraph (d)(14), 262.83(e), 262.84(a), 262.84(a)(1)–(2), 262.84(b), 262.84(b)(1)–(7), 262.84(c)–(e), 262.85(a)–(b), 262.85(b)(1)–(4), 262.85(c), 262.85(c)(1)–(2), 262.85(d)–(e), Note to Paragraph (e), 262.85(f), 262.85(g), Note to Paragraph (g), 262.86(a)–(b), 262.87(a), 262.87(a)(1)–(5), 262.87(a)(5)(i)–(ii), 262.87(a)(6), 262.87(b), 262.87(b)(1)–(3), 262.87(c), 262.87(c)(1), 262.87(c)(1)(i)–(iv), 262.87(c)(2), 262.88, 262.89(a), 262.89(a)(1)–(2), 262.89(b)–(d), 263.10(d), 264.12(a)(2), 264.71(a)(3), 264.71(d), 265.12(a)(2), 265.71(a)(3), 265.71(d), 266.80(a) table, as adopted June 22, 2012, effective August 12, 2012.

Description of federal requirement (include checklist #, if relevant)	**Federal Register** date and page (and/or RCRA statutory authority	Analogous state authority
5. Hazardous Waste Technical Corrections and Clarification. (Checklist 223).	75 FR 12989–13009. March 18 2010, and June 4, 2010, 75 FR 31716–31717.	Arkansas Code of 1987 Annotated (A.C.A.) Sections 8–7–201 through 8–7–226. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, Hazardous Waste Management (HWM) Sections 260.10 ''New hazardous waste management facility or ''new facility'', Part 260 Appendix I, 261.1(c)(10), 261.2(c),Table 1, 261.4(a)(17)(vi), 261.5(b), 261.5(e) intro, 261.5(e)(1), 261.5(e)(2), 261.5(e)(2) comment, 261.5(f) intro, 261.5(f)(2), 261.5(g) intro, 261.5(g)(2), 261.6(a)(2), 261.6(a)(2)(ii), 261.6(a)(3), 261.6(c)(1), 261.6(d), 261.7(a)(1), 261.7(a)(2), 261.7(b)(1), 261.7(b)(3), 261.23(a)(8), 261.30(c)–(d), 261.31(a), 261.32(a) table, 261.33(f), 261, Appendix VII, 262.10(f), 262.11(d), 262.23(f), 262.23(f)(1), 262.23(f)(1)(i)–(ii), 262.23(f)(2), 262.23(f)(3)–(4), 262.34(a)(4), 262.34(b), 263.34(c)(1)–(2), 262.34(d)(4), 262.34(f), 262.34(i), 262.42(a)(1)–(2), 262.42(c), 262.42(c)(1)–(2), 262.42(c) Note, 262.60(b), 263.12, 264.52(b), 264.56(d)(2) introductory text, 264.72(e)(6), 264.72(f)(1), 264.72(f)(7)–(8), 265.56(d)(2) introductory text, 265.72(e)(6), 265.72(f)(1), 265.72(f)(7)–(8), 266.22, 266.70(d), 266.80(b)(1)(viii), 266.80(b)(2)(viii), 266.101(c)(1)–(2), 268.40 table ''Treatment Standards for Hazardous Wastes'', 268.48 Universal Treatment Standards table, 270.4(a), as adopted June 22, 2012, effective August 12, 2012.
6. Removal of Saccharin and its Salts from the Lists of Hazardous Wastes (Checklist 225).	75 FR 78918–78926 December 17, 2010.	Arkansas Code of 1987 Annotated (A.C.A.) Sections 8–7–201 through 8–7–226. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, Hazardous Waste Management (HWM) Sections 261.33(f)/Table, 261 Appendix VIII'', 268.40 Table, 268 Appendix VII/Table 1, as adopted June 22, 2012, effective August 12, 2012.
7. Academic Laboratories Generator Standards Technical Corrections. (Checklist 226).	75 FR 79304–79308 December 20, 2010.	Arkansas Code of 1987 Annotated (A.C.A.) Sections 8–7–201 through 8–7–226. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, Hazardous Waste Management (HWM) Sections 262.200 ''Central accumulation area'', 262.206(b)(3)(i), 262.212(e)(1), 262.214(a)(1), 262.214(b)(1), as adopted June 22, 2012, effective August 12, 2012.
8. Revision of the Land Disposal Treatment Standards for Carbamate Wastes. (Checklist 227).	76 FR 34147–34157 June 13, 2011	Arkansas Code of 1987 Annotated (A.C.A.) Sections 8–7–201 through 8–7–226. Arkansas Pollution Control and Ecology (APC&E) Regulation Number 23, Hazardous Waste Management (HWM) Sections 268.40 Table of Treatment Standards, 268.48 Table of UTS-Universal Treatment Standards, as adopted June 22, 2012, effective August 12, 2012.

H. Where are the revised State rules different from the Federal rules?

There are no State requirements that are more stringent or broader in scope than the Federal requirements.

I. Who handles permits after the authorization takes effect?

The State of Arkansas will issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. We will not issue any more new permits or new portions of permits for the provisions listed in the Table in this document after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which Arkansas is not yet authorized.

J. How does today's action affect Indian Country (8 U.S.C. 1151) in Arkansas?

The State of Arkansas Hazardous Program is not being authorized to operate in Indian Country.

K. What is codification and is the EPA codifying Arkansas' hazardous waste program as authorized in this rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the CFR. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart E for this authorization of Arkansas' program changes until a later date. In this authorization application the EPA is not codifying the rules documented in this **Federal Register** notice.

L. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. The reference to Executive Order 13563 (76 FR 3821, January 21, 2011) is also exempt from review under Executive Order 12866 (56 FR 51735, October 4, 1993). This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action 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 action authorizes preexisting 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 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State authorization application to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. 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 rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The 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 rule does not impose an information collection burden under the

provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). 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 document 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 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). This action will be effective December 30, 2014.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 22, 2014.

Samuel Coleman,

Acting Regional Administrator, Region 6.

[FR Doc. 2014–25724 Filed 10–30–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 05–245, RM–11264, RM–11357; FCC 14–156]

Radio Broadcasting Services; Corona de Tucson, Sierra Vista, Tanque Verde, Vail, Arizona; Animus, Lordsburg, and Virden, New Mexico

AGENCY: Federal Communications Commission.

ACTION: Final rule; application for review.

SUMMARY: The Federal Communications Commission (''Commission'') dismisses in part and otherwise denies the Application for Review filed by CCR-Sierra Vista IV, LLC (''CCR-Sierra'') of the Media Bureau (''Bureau'')'s rejection of CCR-Sierra's proposal to change the community of license of its Station KZMK(FM) from Sierra Vista to Tanque Verde, Arizona, and grant of a conflicting Counterproposal filed by Cochise Broadcasting, LLC and Desert West Air Ranchers (''Joint Parties''). *See* **SUPPLEMENTARY INFORMATION**, *supra*.

DATES: Effective October 31, 2014.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, FCC 14–156, adopted October 14, 2014, and released October 15, 2014. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The complete text of this document may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.bcpiweb.com.*

In the *Report and Order* in this proceeding, the Bureau compared the mutually exclusive proposals under the FM Allotment Priorities and granted the Joint Parties Counterproposal because it would provide greater public interest benefits. The Bureau also rejected CCR-Sierra's arguments that the Joint Parties Counterproposal was defective because: (1) There would not be city-grade coverage at two communities, (2) Federal Aviation Administration approval could not be obtained for one of the allotments; (3) there would be difficulty in obtaining Mexican concurrence for one allotment; (4) Animus, New Mexico, is not a community for allotment purposes; and (5) for one of the change of community proposals, there was no mutual exclusivity between the move-out and move-in communities. *See* 72 FR 53688, September 20, 2007. CCR-Sierra sought reconsideration on the same five grounds, and the Bureau denied these objections.

In its Application for Review, CCR-Sierra reiterates these five arguments. The Commission finds that these issues were properly decided and upholds the Bureau's decision for the stated reasons. The Commission also dismisses a sixth argument on procedural grounds because the Bureau had no opportunity to pass on it in violation of § 1.115(c) of the Commission's rules.

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of the *Memorandum Opinion and Order* to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the Application for Review was denied.)

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2014–25952 Filed 10–30–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 131021878–4158–02]

RIN 0648–XD588

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amounts of Pacific cod from catcher vessels greater than 60 feet (18.3 meters) length overall (LOA) using pot gear, catcher vessels using trawl gear, and American Fisheries Act (AFA) catcher/processors (C/Ps) to Amendment 80 (A80) C/Ps, C/Ps using hook-and-line gear, and C/Ps using pot gear in the Bering Sea and Aleutian Islands management area. This action is necessary to allow the 2014 total allowable catch of Pacific cod to be harvested.

DATES: Effective October 27, 2014, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2014.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands management area (BSAI) according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens

Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2014 Pacific cod total allowable catch (TAC) specified for catcher vessels greater than or equal to 60 feet LOA using pot gear in the BSAI is 15,976 metric tons (mt) as established by the final 2014 and 2015 harvest specifications for groundfish in the BSAI (79 FR 12108, March 4, 2014) and sector reallocations (79 FR 49463, August 21, 2014 and 79 FR 57838, September 26, 2014). The Regional Administrator has determined that catcher vessels greater than or equal to 60 feet LOA using pot gear will not be able to harvest 1,500 mt of the remaining 2014 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*5*).

The 2014 Pacific cod TAC specified for catcher vessels using trawl gear in the BSAI is 45,607 mt as established by the final 2014 and 2015 harvest specifications for groundfish in the BSAI (79 FR 12108, March 4, 2014) and sector reallocations (79 FR 49463, August 21, 2014 and 79 FR 57838, September 26, 2014). The Regional Administrator has determined that catcher vessels using trawl gear will not be able to harvest 2,500 mt of the remaining 2014 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*9*).

The 2014 Pacific cod TAC specified for AFA C/Ps in the BSAI is 5,965 mt as established by the final 2014 and 2015 harvest specifications for groundfish in the BSAI (79 FR 12108, March 4, 2014) and sector reallocation (79 FR 57838, September 26, 2014). The Regional Administrator has determined that AFA C/Ps will not be able to harvest 500 mt of the remaining 2014 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*7*).

Therefore, in accordance with § 679.20(a)(7)(iii)(A) and § 679.20(a)(7)(iii)(B), NMFS reallocates 4,500 mt of Pacific cod to A80 C/Ps, C/Ps using hook-and line-gear, and C/Ps using pot gear in the BSAI.

The harvest specifications for Pacific cod included in the final 2014 harvest specifications for groundfish in the BSAI (79 FR 12108, March 4, 2014, 79 FR 49463, August 21, 2014, and 79 FR 57838, September 26, 2014) are revised as follows: 14,476 mt for catcher vessels greater than or equal to 60 feet LOA using pot gear, 43,107 mt for catcher vessels using trawl gear, 5,465 mt for AFA C/Ps, 33,631 mt to A80 C/Ps, 111,516 mt for C/Ps using hook-and-line gear, and 5,889 mt for C/Ps using pot gear.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Pacific cod specified from other sectors to A80 C/Ps, C/Ps using hook-and-line gear, and C/Ps using pot gear in the BSAI. Since these fisheries are currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 22, 2014.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 27, 2014.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–25852 Filed 10–27–14; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 79, No. 211
Friday, October 31, 2014

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AN10

Prevailing Rate Systems; Redefinition of Certain Appropriated Fund Federal Wage System Wage Areas

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing a proposed rule that would redefine the geographic boundaries of several appropriated fund Federal Wage System (FWS) wage areas for pay-setting purposes. Based on recent reviews of Metropolitan Statistical Area (MSA) boundaries in a number of wage areas, OPM proposes redefinitions affecting the following wage areas: Washington, DC; Hagerstown-Martinsburg-Chambersburg, MD; Minneapolis-St. Paul, MN; Charlotte, NC; Columbia, SC, and Southwestern Wisconsin. In addition, this proposed rule would make three minor corrections to the Miami, FL; Columbus, GA, and Kansas City, MO, wage areas.

DATES: We must receive comments on or before December 1, 2014.

ADDRESSES: You may submit comments, identified by ''RIN 3206–AN10,'' using any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Brenda L. Roberts, Acting Deputy Associate Director for Pay and Leave, Employee Services, U.S. Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200.

Email: pay-leave-policy@opm.gov.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, by telephone at (202) 606–2838 or by email at *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: OPM is issuing a proposed rule to redefine the geographic boundaries of several appropriated fund FWS wage areas. These changes are based on recommendations of the Federal Prevailing Rate Advisory Committee (FPRAC), the statutory national labor-management committee responsible for advising OPM on matters affecting the pay of FWS employees. From time to time, FPRAC reviews the boundaries of wage areas and provides OPM with recommendations for changes if the Committee finds that changes are warranted.

OPM considers the following regulatory criteria under 5 CFR 532.211 when defining FWS wage area boundaries:

(i) Distance, transportation facilities, and geographic features;

(ii) Commuting patterns; and

(iii) Similarities in overall population, employment, and the kinds and sizes of private industrial establishments.

In addition, OPM regulations at 5 CFR 532.211 do not permit splitting MSAs for the purpose of defining a wage area, except in very unusual circumstances.

The Office of Management and Budget defines MSAs and maintains and updates the definitions of MSA boundaries following each decennial census. MSAs are composed of counties and are defined on the basis of a central urbanized area—a contiguous area of relatively high population density. Additional surrounding counties are included in MSAs if they have strong social and economic ties to central counties.

When the boundaries of wage areas were first established in the 1960s, there were fewer MSAs than there are today and the boundaries of the then existing MSAs were much smaller. Most MSAs were contained within the boundaries of a wage area. MSAs have expanded each decade and in some cases now extend beyond the boundaries of the wage area.

FPRAC recently reviewed several wage areas where boundaries subdivide certain MSAs and concurred by consensus with the changes described in this proposed rule. These changes would be effective on the first day of the first applicable pay period beginning on or after 30 days following publication of the final regulations.

Washington-Arlington-Alexandria, DC–MD–VA–WV MSA

Washington, DC; Calvert, Charles, Frederick, Montgomery, and Prince George's Counties, MD; Alexandria, Fairfax, Falls Church, Fredericksburg, Manassas, and Manassas Park Cities, VA; Arlington, Clarke, Culpeper, Fairfax, Fauquier, Loudoun, Prince William, Rappahannock, Spotsylvania, Stafford, and Warren Counties, VA; and Jefferson County, WV, comprise the Washington-Arlington-Alexandria, DC–MD–VA–WV MSA. The Washington-Arlington-Alexandria, DC–MD–VA–WV MSA is split between the Washington, DC, wage area and the Hagerstown-Martinsburg-Chambersburg, MD, wage area. Washington, DC; Charles, Frederick, Montgomery, and Prince George's Counties, MD; Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park Cities, VA; and Arlington, Fairfax, Loudoun, and Prince William Counties, VA, are part of the Washington, DC, survey area. Calvert and St. Mary's Counties, MD; Fredericksburg City, VA; Clarke, Fauquier, King George, Spotsylvania, Stafford, and Warren Counties, VA; and Jefferson County, WV, are part of the Washington, DC, area of application. Culpeper and Rappahannock Counties, VA, are part of the Hagerstown-Martinsburg-Chambersburg area of application.

OPM proposes to redefine Culpeper and Rappahannock Counties to the Washington, DC, area of application so that the entire Washington-Arlington-Alexandria, DC–MD–VA–WV MSA is in one wage area. There are seven FWS employees working in Culpeper County and one FWS employee working in Rappahannock County.

Rochester, MN MSA

Dodge, Fillmore, Olmsted, and Wabasha Counties, MN, comprise the Rochester, MN MSA. The Rochester, MN MSA is split between the Minneapolis-St. Paul, MN, wage area and the Southwestern Wisconsin wage area. Dodge, Olmsted, and Wabasha Counties are part of the Minneapolis-St. Paul area of application and Fillmore County is part of the Southwestern Wisconsin area of application.

OPM proposes to redefine Fillmore County to the Minneapolis-St. Paul area of application so that the entire Rochester, MN MSA is in one wage area.

There are currently no FWS employees working in Fillmore County.

Charlotte-Concord-Gastonia, NC MSA

Cabarrus, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, and Union Counties, NC, and Chester, Lancaster, and York Counties, SC; comprise the Charlotte-Concord-Gastonia, NC–SC MSA. The Charlotte-Concord-Gastonia MSA is split between the Charlotte, NC, wage area and the Columbia, SC, wage area. Cabarrus, Gaston, Mecklenburg, Rowan, and Union Counties, NC, are part of the Charlotte survey area; Iredell and Lincoln Counties, NC, and Lancaster and York Counties, SC, are part of the Charlotte area of application; and Chester County, SC, is part of the Columbia area of application.

OPM proposes to redefine Chester County to the Charlotte area of application so that the entire Charlotte-Concord-Gastonia, NC–SC MSA is in one wage area. There are currently no FWS employees working in Chester County.

Miscellaneous Corrections

In addition, this proposed rule would make the following minor corrections:

- Update the name of the Columbus Consolidated Government in the Columbus, GA, FWS wage area because Columbus is the official name of the entity resulting from the consolidation of the City of Columbus and Muscogee County in 1971.
- Update the name of Dade County in the Miami, FL, FWS wage area because the name of Dade County was officially changed to Miami-Dade County in 1997.
- Delete the name of the St. Louis, MO, wage area from the list of area of application counties in the Kansas City, MO, wage area because, due to a formatting error, the name of the St. Louis wage area was incorrectly printed as if it was an area of application county in the Kansas City wage area.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

Accordingly, OPM is proposing to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

■ 2. Appendix C to subpart B is amended by revising the wage area listings in paragraph (3), under the undesignated center heading Definitions of Wage and Wage Survey Areas, for the Washington, DC; Miami, FL; Columbus, GA; Hagerstown-Martinsburg-Chambersburg, MD; Minneapolis-St. Paul, MN; Kansas City, MO; Charlotte, NC; Columbia, SC, and Southwestern Wisconsin wage areas to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

DISTRICT OF COLUMBIA

Washington, DC

Survey Area

District of Columbia:
  Washington, DC
Maryland:
  Charles
  Frederick
  Montgomery
  Prince George's
Virginia (cities):
  Alexandria
  Fairfax
  Falls Church
  Manassas
  Manassas Park
Virginia (counties):
  Arlington
  Fairfax
  Loudoun
  Prince William

Area of Application. Survey area plus:

Maryland:
  Calvert
  St. Mary's
Virginia (city):
  Fredericksburg
Virginia (counties):
  Clarke
  Culpeper
  Fauquier
  King George
  Rappahannock
  Spotsylvania
  Stafford
  Warren
West Virginia
  Jefferson

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FLORIDA

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Miami

Survey Area

Florida:
  Miami-Dade

Area of Application. Survey area plus:

Florida:
  Broward
  Collier
  Glades
  Hendry
  Highlands
  Martín
  Monroe
  Okeechobee
  Palm Beach
  St. Lucie

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GEORGIA

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Columbus

Survey Area

Alabama:
  Autauga
  Elmore
  Lee
  Macon
  Montgomery
  Russell
Georgia:
  Chattahoochee
  Columbus

Area of Application. Survey area plus:

Alabama:
  Bullock
  Butler
  Chambers
  Coosa
  Crenshaw
  Dallas
  Lowndes
  Pike
  Tallapoosa
  Wilcox
Georgia:
  Harris
  Marion
  Quitman
  Schley
  Stewart
  Talbot
  Taylor
  Troup
  Webster

* * * * *

MARYLAND

* * * * *

Hagerstown-Martinsburg-Chambersburg

Survey Area

Maryland:
  Washington
Pennsylvania:
  Franklin
West Virginia:
  Berkeley

Area of Application. Survey area plus:

Maryland:
  Allegany
  Garrett
Pennsylvania:
  Fulton
Virginia (cities):
  Harrisonburg
  Winchester
Virginia (counties):
  Frederick
  Greene
  Madison

Page
Rockingham
Shenandoah
West Virginia:
Hampshire
Hardy
Mineral
Morgan

* * * * *

MINNESOTA

* * * * *

Minneapolis-St. Paul

Survey Area

Minnesota:
Anoka
Carver
Chisago
Dakota
Hennepin
Ramsey
Scott
Washington
Wright
Wisconsin:
St. Croix

Area of Application. Survey area plus:

Minnesota:
Benton
Big Stone
Blue Earth
Brown
Chippewa
Cottonwood
Dodge
Douglas
Faribault
Fillmore
Freeborn
Goodhue
Grant
Isanti
Kanabec
Kandiyohi
Lac Qui Parle
Le Sueur
McLeod
Martin
Meeker
Mille Lacs
Morrison
Mower
Nicollet
Olmsted
Pope
Redwood
Renville
Rice
Sherburne
Sibley
Stearns
Steele
Stevens
Swift
Todd
Traverse
Wabasha
Wadena
Waseca
Watonwan
Yellow Medicine
Wisconsin:
Pierce
Polk

* * * * *

Missouri

Kansas City

Survey Area

Kansas:
Johnson
Leavenworth
Wyandotte
Missouri:
Cass
Clay
Jackson
Platte
Ray

Area of Application. Survey area plus:

Kansas:
Allen
Anderson
Atchison
Bourbon
Doniphan
Douglas
Franklin
Linn
Miami
Missouri:
Adair
Andrew
Atchison
Bates
Buchanan
Caldwell
Carroll
Chariton
Clinton
Cooper
Daviess
De Kalb
Gentry
Grundy
Harrison
Henry
Holt
Howard
Johnson
Lafayette
Linn
Livingston
Macon
Mercer
Nodaway
Pettis
Putnam
Saline
Schuyler
Sullivan
Worth

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NORTH CAROLINA

* * * * *

Charlotte

Survey Area

North Carolina:
Cabarrus
Gaston
Mecklenburg
Rowan
Union

Area of Application. Survey area plus:

North Carolina:
Alexander
Anson
Catawba
Cleveland
Iredell
Lincoln
Stanly
Wilkes
South Carolina:
Chester
Chesterfield
Lancaster
York

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SOUTH CAROLINA

* * * * *

Columbia

Survey Area

South Carolina:
Darlington
Florence
Kershaw
Lee
Lexington
Richland
Sumter

Area of Application. Survey area plus:

South Carolina:
Abbeville
Anderson
Calhoun
Cherokee
Clarendon
Fairfield
Greenville
Greenwood
Laurens
Newberry
Oconee
Orangeburg
Pickens
Saluda
Spartanburg
Union

* * * * *

WISCONSIN

* * * * *

Southwestern Wisconsin

Survey Area

Wisconsin:
Chippewa
Eau Claire
La Crosse
Monroe
Trempealeau

Area of Application. Survey area plus:

Minnesota:
Houston
Winona
Wisconsin:
Barron
Buffalo
Clark
Crawford
Dunn
Florence
Forest
Jackson
Juneau
Langlade
Lincoln
Marathon
Marinette
Menominee

Oneida
Pepin
Portage
Price
Richland
Rusk
Shawano
Taylor
Vernon
Vilas
Waupaca
Wood

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[FR Doc. 2014–25903 Filed 10–30–14; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 9501

RIN 3206–AL02

Office of Personnel Management Criteria for Internal Revenue Service Broadbanding Systems

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: The Office of Personnel Management (OPM) hereby withdraws a notice of proposed rulemaking (NPRM) regarding the criteria governing the Internal Revenue Service (IRS) broadbanding systems, published in the **Federal Register** April 17, 2007. OPM has determined withdrawal of the NPRM is appropriate as it would be impractical to issue this rule at this time.

DATES: *Effective Date:* The proposed rule, published on April 17, 2007, in the **Federal Register** (72 FR 19126), is withdrawn as of October 31, 2014.

FOR FURTHER INFORMATION CONTACT: Jennifer Melvin, Senior Human Resources Specialist, Office of Personnel Management, Employee Services, Pay and Leave, Room 7H31, 1900 E Street NW., Washington, DC 20415. *Email: jennifer.melvin@opm.gov; Telephone:* (202) 606–2858; or *Facsimile:* (202) 606–0824.

SUPPLEMENTARY INFORMATION:

Background

Under 5 U.S.C. 9509, the Secretary of the Treasury may, under criteria prescribed by the Office of Personnel Management (OPM), establish one or more broadbanding systems covering all or any portion of the Internal Revenue Service (IRS) workforce that would otherwise be covered by the General Schedule (GS) pay and classification system. OPM published its criteria for IRS broadbanding systems as a final notice in the **Federal Register** on December 19, 2000 (65 FR 79433) and the criteria in that notice are still in effect.

On April 17, 2007, OPM issued a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (72 FR 19126) to amend title 5, Code of Federal Regulations, to establish a new chapter XCV and part 9501 providing revised criteria for IRS broadbanding systems. The proposed regulations would have provided the Department of the Treasury with the flexibility, in coordination with OPM, to establish broader bands for covered IRS employees and would have established a more direct relationship between pay and performance. The proposed regulations would have also revised the criteria consistent with changes in the GS pay administration rules made by the Federal Workforce Flexibility Act of 2004 and OPM implementing regulations.

The comment period for the NPRM closed on June 18, 2007. OPM received and considered all five written comments in response to the NPRM. Comments were received from one Federal agency, one labor organization, two professional associations, and one individual. The following is a general overview of the comments OPM received during the public comment period raised in connection with the merits of the proposed rule.

The comments received were varied. The main items of concern included the role of labor organizations in applying the IRS broadbanding system authority and OPM criteria, the maximum number of grades that may be combined into a band, the requirements and flexibilities for providing various within-band pay adjustments, performance ratings and the IRS performance management system, limitations on the maximum rates of pay for bands, and the flexibility to establish control points that limit salary progression within bands. Several commenters also asked for clarification regarding the language used in various parts of the proposed rule.

Office of Personnel Management.

Katherine Archuleta,

Director.

[FR Doc. 2014–25902 Filed 10–30–14; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. APHIS–2014–0032]

Importation of Beef From a Region in Argentina

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We are reopening the comment period for our proposed rule that would allow, under certain conditions, the importation of fresh (chilled or frozen) beef from a region in Argentina located north of Patagonia South and Patagonia North B, referred to as Northern Argentina. This action will allow interested persons additional time to prepare and submit comments.

DATES: The comment period for the proposed rule published on August 29, 2014 (79 FR 51508) is reopened. We will consider all comments that we receive on or before December 29, 2014.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS–2014–0032.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2014–0032, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS–2014–0032* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Silvia Kreindel, Senior Staff Veterinarian, Regionalization Evaluation Services, National Import Export Services, Veterinary Services, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 851–3313.

SUPPLEMENTARY INFORMATION: On August 29, 2014, we published in the **Federal Register** (79 FR 51508–51514, Docket No. APHIS–2014–0032) a proposal to allow, under certain conditions, the

importation of fresh (chilled or frozen) beef from a region in Argentina located north of Patagonia South and Patagonia North B, referred to as Northern Argentina.

Comments on the proposed rule were required to be received on or before October 28, 2014. We are reopening the comment period on Docket No. APHIS–2014–0032 for an additional 60 days. We will also accept all comments received between October 29, 2014 (the day after the close of the original comment period) and the date of this document. This action will allow interested persons additional time to prepare and submit comments.

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 27th day of October 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–25936 Filed 10–30–14; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2014–BT–TP–0007]

RIN: 1904–AD17

Energy Conservation Program: Test Procedures for Ceiling Fan Light Kits

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

ACTION: Notice of proposed rulemaking.

SUMMARY: In this notice of proposed rulemaking (NOPR), the U.S. Department of Energy (DOE) proposes to revise its test procedures for ceiling fan light kits (CFLKs). DOE proposes to update the current test procedures (appendix V) by replacing references to ENERGY STAR test procedures with references to DOE lamps test procedures for medium screw base lamps and to industry test procedures for pin-based fluorescent lamps. DOE also proposes to establish new test procedures (appendix V1) that would support amendments to CFLK energy conservation standards that are currently being considered by DOE. Specifically, these new test procedures would establish an efficacy-based metric for all lamps packaged with CFLKs and for CFLKs with integrated solid-state lighting circuitry. DOE proposes that CFLKs with lamp types without corresponding DOE test procedures would be tested using current industry test procedures for those lamp types. This NOPR also clarifies the energy conservation standards for ceiling fan light kits by replacing references to ENERGY STAR with tables that contain the specific performance requirements from the ENERGY STAR documents. Finally, DOE also addresses standby and off-mode power consumption and provides updated guidance related to accent lighting in CFLKs. DOE is also announcing a public meeting to discuss and receive comments on the content presented in this rulemaking.

DATES:

Meeting: DOE will hold two public meetings on November 18, 2014 and November 19, 2014, from 9:00 a.m. to 4:00 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

Comments: DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than January 14, 2015. See section V, ''Public Participation,'' for details.

ADDRESSES: The public meeting on November 18 will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585–0121. The public meeting on November 19 will be held at the U.S. Department of Energy, Forrestal Building, Room 6E–069, 1000 Independence Avenue SW., Washington, DC 20585–0121.

For additional information about attending the meeting, see section V of this document, ''Public Participation.''

Any comments submitted must identify the NOPR for Test Procedures for CFLKs and provide docket number EE–2014–BT–TP–0007 and/or regulatory information number (RIN) number 1904–AD17. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email: CFLK2014TP0007@ee.doe.gov.* Include the docket number and/or RIN in the subject line of the message.

3. Postal *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC, 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC, 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD. It is not necessary to include printed copies.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document, ''Public Participation.''

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

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

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

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

Ms. Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 287–6111. Email: *Jennifer.Tiedeman@hq.doe.gov.*

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I. Authority and Background

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering the ceiling fan light kits (CFLKs) that are the focus of this notice.[2] (42 U.S.C. 6291(5), 6293(b)(16)(A)(ii), 6295(ff)(2)–(5))

Under EPCA, the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must follow in order to produce data that is used for (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA, and (2) making representations about the efficiency of those products. (42 U.S.C. 6293(c); 42 U.S.C. 6295(s)) Similarly, DOE must use these test requirements to determine whether products comply with any relevant standards established under EPCA. (42 U.S.C. 6295(s))

General Test Procedure Rulemaking Process

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

In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)) Finally, in any rulemaking to amend a test procedure, DOE must determine to what extent, if any, the proposed test procedure would alter the product's measured energy efficiency as determined under the existing test procedure. (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedures would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2))

The existing energy conservation standards for CFLKs were established by EPACT 2005 and later amended by EPCA. (42 U.S.C. 6295(ff)) Specifically, EPACT 2005 established and set separate energy conservation standards for three groups of CFLKs: (1) those with medium screw base sockets (hereafter ''product class 1''), (2) those with pin-based sockets for fluorescent lamps (hereafter ''product class 2''), and (3) all other CFLKs not included in product class 1 or 2 (hereafter ''product class 3''). (42 U.S.C. 6295(ff)(2)–(4)) In a technical amendment published on October 18, 2005, DOE codified the statute's requirements for the first two groups of CFLKs, those with medium screw base sockets and with pin-based sockets for fluorescent lamps. 70 FR 60413. For the third group of CFLKs, EPACT 2005 specified that the prescribed standard for these CFLKs would become effective only if DOE failed to issue a final rule on energy conservation standards for CFLKs by January 1, 2007. (42 U.S.C. 6295(ff)(4)(C)) Because DOE did not issue a final rule on standards for CFLKs by the statutory deadline, on January 11, 2007, DOE published a technical amendment that codified the statute's requirements for product class 3 CFLKs. 72 FR 1270. Another technical amendment to reflect the statutory requirements on March 3, 2009 (74 FR 12058) added a provision that CFLKs with sockets for pin-based fluorescent lamps must be packaged with lamps to fill all sockets.

EPCA allows DOE to amend energy conservation standards for CFLKs any time after January 1, 2010. (42 U.S.C. 6295(ff)(5)) In a separate rulemaking proceeding, DOE is considering amending energy conservation standards for CFLKs (hereafter the ''ECS rulemaking for CFLKs'').[3] DOE initiated that rulemaking by publishing a **Federal Register** notice announcing a public meeting and availability of the framework document on March 15, 2013. 78 FR 16443. DOE held a public meeting to discuss the framework document for the CFLK standards rulemaking on March 22, 2013.[4]

Additionally, the Energy Independence and Security Act of 2007 (EISA 2007), Pub. L. 110–140, amended EPCA to require that at least once every 7 years, DOE conduct an evaluation of all covered products and either amend the test procedures (if the Secretary determines that amended test procedures would more accurately or fully comply with the requirements of 42 U.S.C. 6293(b)(3) or publish a determination in the **Federal Register** not to amend them. (42 U.S.C. 6293(b)(1)(A))) Pursuant to this requirement, DOE must review the test procedures for CFLKs not later than December 19, 2014 (i.e., 7 years after the enactment of EISA 2007). Thus, the final rule resulting from this rulemaking will satisfy the requirement to review the test procedures for CFLKs within 7 years of the enactment of EISA 2007.

For test procedures of covered products that do not fully account for standby mode and off mode energy

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

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

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

[4] The framework document and public meeting information are available online at regulations.gov, docket number EERE–2012–BT–STD–0045 at *http://www.regulations.gov/#!documentDetail;D=EERE-2012-BT-STD-0045-0001.*

consumption, EISA 2007 directs DOE to amend its test procedures to account for standby mode and off mode energy consumption, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)) If integrated test procedures are technically infeasible, DOE must prescribe separate standby mode and off mode test procedures for the covered product, if technically feasible. Id. EISA 2007 also amended EPCA to require that any new or amended energy conservation standard adopted after July 1, 2010, incorporate standby mode and off mode energy use into a single standard if feasible, or otherwise adopt a separate standard for such energy use for that product, pursuant to 42 U.S.C. 6295(o). (42 U.S.C. 6295(gg)(3))

II. Summary of the Notice of Proposed Rulemaking

In this NOPR, DOE proposes to amend DOE's current test procedures for CFLKs contained in 10 CFR part 430, subpart B, appendix V; 10 CFR 429.33; and 10 CFR 430.23.[5] DOE proposes to (1) clarify that lamp efficacy measurements to meet existing CFLK energy conservation standards should be made according to DOE lamp test procedures, where they exist; (2) replace references to outdated ENERGY STAR[6] requirements in appendix V with references to the latest versions of industry standards; and (3) replace references to ENERGY STAR requirements in existing CFLK standards contained in 10 CFR 430.32(s) with the specific requirements. DOE has tentatively concluded that these proposed amendments will not affect any measurements required to comply with existing standards. DOE also proposes to modify previously issued guidance regarding accent lighting in CFLKs to specify that such light sources in CFLKs must be tested and are subject to standards.

In order to support the ongoing ECS rulemaking for CFLKs, DOE also proposes to adopt a single efficiency metric measured in lumens per watt (hereafter, ''efficacy''), that would be applicable to all product classes. DOE proposes, where possible, to determine the CFLK efficiency by measuring the efficacy of the lamp(s) packaged with the CFLK (hereafter, ''lamp efficacy'') and require using existing DOE lamp test procedures. Where it is technically infeasible to measure lamp efficacy (e.g., for CFLKs with integrated solid-state lighting[7] circuitry), DOE proposes to determine CFLK efficiency by measuring the efficacy of the CFLK itself (hereafter, ''luminaire efficacy''). For those lamp types used in CFLKs that do not have corresponding DOE test procedures, DOE proposes to incorporate by reference current industry standard test procedures. Further, DOE proposes to establish a new appendix V1 that will specify test procedures for CFLKs packaged with lamp types for which DOE test procedures do not exist and for CFLKs packaged with inseparable light sources that require luminaire efficacy. Because these proposed amendments will likely change the measured values required to comply with the existing CFLK standards for CFLKs in product classes 2 and 3, DOE proposes the use of the new appendix V1 and associated updates to the regulations be required concurrent with the compliance date of standards established by the ongoing ECS rulemaking for CFLKs. 78 FR 16443.

This notice also addresses DOE's requirement to account for standby mode and off-mode power consumption in test procedures that support energy conservation standards. (42 U.S.C. 6295(gg)(2)(A) and (3)) DOE believes that CFLKs do not consume power in off mode and consume power in standby mode only if they are controlled via remote control. DOE proposes that the standby mode energy consumption of CFLKs be accounted for under the efficiency metric for ceiling fans rather than under the CFLK efficiency metric. The rationale for this approach is that control of the CFLK is initiated through the ceiling fan because the standby sensor and controller are nearly always shared between the ceiling fan and the CFLK, and the remote control receiver is essentially always installed in the ceiling fan housing.

III. Discussion

A. Amendments To Existing Test Procedures

The current DOE standards for CFLKs in product class 1 (those with medium base sockets) (42 U.S.C. 6295(ff)(2)) use the efficacy of the lamp(s) packaged with the CFLK (lumens emitted per watt consumed [lm/W]) as the measure of CFLK efficiency. The current DOE standards for CFLKs in product class 2 (pin-based sockets for fluorescent lamps) (42 U.S.C. 6295(ff)(3)) use the efficacy of the lamp and ballast system(s) (lm/W) (hereafter ''system efficacy'') packaged with the CFLK as the measure of CFLK efficiency. The standard for product class 3 is based on maximum allowable operating wattage, which is regulated as a design standard that requires including a wattage limiter in these products. Accordingly, DOE has not established test procedures for product class 3 CFLKs. 72 FR 1270.

The current DOE test procedures for product class 1 CFLKs incorporate by reference sections 3 and 4 of the ''CFL Requirements for Testing'' of the ''ENERGY STAR Program Requirements for Compact Fluorescent Lamps,'' Version 3.0, which in turn references the Illuminating Engineering Society of North America (IES) LM–66–00 test procedures for lamp efficacy testing (IES LM–66–00, ''Electrical and Photometric Measurements of Single-Ended Compact Fluorescent Lamps''). The current DOE test procedures for product class 2 CFLKs incorporate by reference sections 3 and 4 of the ''ENERGY STAR Program Requirements for Residential Light Fixtures,'' Version 4.0, which also reference IES LM–66–00 and IES LM–9–99 for system efficacy testing, depending on lamp type. Table 1 summarizes the current metrics and test procedures for CFLKs.

TABLE 1—CFLKS EFFICIENCY METRICS AND REFERENCE TEST PROCEDURES BY PRODUCT CLASS

Product class	Efficiency or design metric	Industry test procedures incorporated into DOE's regulations
1 (CFLKs with medium screw base sockets).	Lamp efficacy (lm/W)	''CFL Requirements for Testing'' of the ''ENERGY STAR Program Requirements for Compact Fluorescent Lamps,'' Version 3.0, which references IES LM–66–00 for lamp efficacy measurements.

[5] On December 8, 2006, DOE published a final rule in the **Federal Register** for test procedures for CFLKs. 71 FR 71340.

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

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

TABLE 1—CFLKS EFFICIENCY METRICS AND REFERENCE TEST PROCEDURES BY PRODUCT CLASS—Continued

Product class	Efficiency or design metric	Industry test procedures incorporated into DOE's regulations
2 (CFLKs with pin-based fluorescent sockets).	System efficacy (lm/W)	''ENERGY STAR Program Requirements for Residential Light Fixtures,'' Version 4.0, which references IES LM–66–00 and IES LM–9–99 for system efficacy measurements.
3 (All other CFLKs)	Wattage	N/A.

The ENERGY STAR program procedures incorporated into the DOE test procedures for CFLKs, and the IES test procedures referenced therein, are no longer current. DOE's regulations incorporate Version 3.0 of the ''ENERGY STAR Program Requirements for Compact Fluorescent Lamps,'' which was replaced by Version 4.3. Further, on September 30, 2014, Version 4.3 was replaced by ''ENERGY STAR Program Requirements for Lamps Version 1.0'' (finalized on August 28, 2013). Version 4.0 of the ''ENERGY STAR Program Requirements for Residential Light Fixtures'' has been replaced by the ''ENERGY STAR Program Requirements for Luminaires Version 1.2.'' Moreover, the IES test procedures referenced in these ENERGY STAR test procedures have been updated. For example, the current version of IES LM–66 is the 2011 version (IES LM–66–11), whereas the version referenced in the current DOE test procedures is the 2000 version (IES LM–66–00).

Because these procedures referenced in the DOE test procedures for CFLKs, and the IES test procedures referenced therein, are no longer current, DOE is proposing to update the CFLK test procedures to reference existing DOE lamp test procedures for covered lamps. For those lamp types without a corresponding DOE test procedure, DOE proposes to reference the latest industry standard test procedures and also add clarifications to existing sampling requirements. This NOPR also presents updates to prior DOE guidance related to accent lighting.

As described in section I, when DOE amends test procedures, it must consider to what extent the proposed test procedure would alter the measured energy efficiency as determined under the existing test procedure. (42 U.S.C. 6293(e)(1)) For CFLKs this requirement only applies to CFLKs with medium screw base sockets and pin-based sockets for fluorescent lamps—the only CFLK product classes with test procedures, both of which DOE is proposing to amend. These amendments are discussed further in the sections that follow.

1. Test Procedures for CFLKs Packaged With Medium Screw Bases

For CFLKs with medium screw base sockets, the current DOE test procedures reference the ''CFL Requirements for Testing'' of the ''ENERGY STAR Program Requirements for Compact Fluorescent Lamps,'' Version 3.0, which in turn reference the Illuminating Engineering Society of North America (IES) LM–66–00 test procedures for lamp efficacy testing. DOE proposes to replace the reference to the ENERGY STAR specification with a reference to the current DOE test procedures for medium screw base compact fluorescent lamps (located at 10 CFR 430, subpart B, appendix W), which references IES LM–66–11. DOE analyzed the potential differences in the methodologies incorporated by reference in the current and proposed test procedures (i.e., LM–66–00 for the existing test procedure and LM–66–11 for the proposed test procedure). DOE found that there are subtle, clarification-type differences between the two methods, but that the measurement of efficacy is the same. Thus, DOE believes that any differences in the test procedures would be unlikely to yield differences in the measured values of lamp efficacy for CFLKs with medium screw base sockets. In addition, DOE's proposal would eliminate an extra layer of documents referenced. Thus, for CFLKs packaged with medium screw base lamps, DOE proposes to reference appendix W, the DOE test procedure for medium base compact fluorescent lamps (MBCFLs) and 10 CFR 429.35, DOE's sampling requirements for MBCFLs. DOE proposes to implement this change by removing the current test specifications for CFLKs packaged with medium screw bases from appendix V and amending 10 CFR 429.33 and 10 CFR 430.23 to reference respectively, 10 CFR 429.35 and appendix W for CFLKs packaged with medium screw base compact fluorescent lamps. DOE requests comments on the proposed changes for existing test procedures for CFLKs packaged with medium screw base lamps.

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

DOE also proposes to update the test procedure for CFLKs with pin-based sockets for fluorescent lamps. The current DOE test procedures for CFLKs with pin-based sockets for fluorescent lamps reference the ''ENERGY STAR Program Requirements for Residential Light Fixtures,'' Version 4.0, which in turn references IES LM–66–00 (for compact fluorescent lamps [CFLs]) and IES LM–9–99 (for all other fluorescent lamps). DOE proposes to remove the ENERGY STAR references and update the test procedures with direct references to the current industry test procedures, namely IES LM–66–11 and IES LM–9–09. The ENERGY STAR program requirements specify that the efficacy of the lamp should be measured using the ballast with which it is packaged rather than a reference ballast. DOE notes that although both IES LM–66–11 and IES LM–9–09 specify that lamps with external ballasts (e.g., pin-based fluorescent lamps) be tested on a reference ballast, they also contain provisions that allow for such lamps to be tested on commercially available ballasts, rather than on a reference ballast when it is desirable to measure the performance (e.g., system efficacy) of a specific lamp ballast platform. Because changing the current test procedure to require measurement of pin-based fluorescent lamps on a reference ballast would result in a change in measured values, DOE proposes to specify in appendix V that system efficacy testing of pin-based fluorescent lamps be conducted with ballasts that are packaged with CFLKs. Further, DOE found that there are subtle, clarification-type differences between IES LM–66–00 and IES LM–66–11 and between IES LM–9–99 and LM–9–09 but that the general measurement of system efficacy is the same. Thus, DOE believes that any differences in the current and proposed test procedures would be unlikely to yield differences in the measured values of system efficacy for CFLKs with pin-based fluorescent lamps but would eliminate an extraneous layer of reference documents. DOE therefore

proposes to amend appendix V to reference IES LM–66–11 and IES LM–9–09, as applicable, depending on the type of pin-based lamp that is packaged with the CFLK.

DOE notes that EPCA requires CFLK test procedures to be based on the test procedures referenced in the ENERGY STAR specifications for ''Residential Light Fixtures and Compact Fluorescent Light Bulbs'', as in effect on August 8, 2005. (42 U.S.C. 6293(b)(16)(A)(ii)) DOE believes it will remain in compliance with this requirement after updating references as described above, as the older industry standards referenced in the ENERGY STAR version and the latest versions of these industry standards have not changed substantively.

DOE requests comments on the proposed changes for existing test procedures for CFLKs packaged with pin-based fluorescent lamps.

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

CFLK energy conservation standards are codified in 10 CFR 430.32(s). Currently the text in 10 CFR 430.32(s) refers to the ENERGY STAR Program requirements for Compact Fluorescent Lamps version 3, for standards applicable to CFLKs packaged with medium screw base lamps and the ENERGY STAR Program requirements for Residential Light Fixtures, version 4.0, for standards applicable to CFLKs packaged with pin-based fluorescent lamps. To state more clearly the minimum requirements for these products, DOE proposes to replace the references to ENERGY STAR with tables that contain the specific performance requirements from the ENERGY STAR documents.

For CFLKs packaged with medium screw base CFLs the standards table would include the efficacy, lumen maintenance at 1,000 hours, lumen maintenance at 40 percent of lifetime, rapid cycle stress, and lifetime requirements specified in the ENERGY STAR Program requirements for Compact Fluorescent Lamps, version 3. For CFLKs packaged with medium screw base light sources other than CFLs, the standards table would include the efficacy requirements specified in the ENERGY STAR Program requirements for Compact Fluorescent Lamps, version 3. For CFLKs packaged with pin-based fluorescent lamps, the standards table would include the system efficacy in the ENERGY STAR Program requirements for Residential Light Fixtures version 4.0. DOE requests comment on replacing references to ENERGY STAR documents with the specific requirements from the ENERGY STAR documents referenced in CFLK energy conservation standards, codified at 10 CFR 430.32(s).

4. Clarifications for Accent Lighting

DOE previously issued guidance on accent lighting used in CFLKs in a test procedure technical amendment (71 FR 71347 [December 8, 2006]), and recorded this guidance for easier reference in its Guidance and Frequently Asked Questions (FAQ) Web site.[8] In this guidance DOE stated, ''DOE does not consider ceiling fan accent lighting that is not a significant light source to be part of the 190-watt limitation.'' Because it is difficult to quantitatively define ''a significant light source'' in a CFLK as it may vary depending on the application in which it is used and may require a subjective determination of what provides accent lighting versus overall illumination, DOE believes that this may result in inconsistency in the application of CFLK standards. Therefore, DOE proposes to withdraw the current guidance on accent lighting 30 days after the publication of the final rule. DOE proposes to consider all lighting packaged with any CFLK to be subject to energy conservation requirements. DOE requests comment on its withdrawal of current guidance on accent lighting in CFLKs and proposal to consider all lighting packaged with any CFLKs to be subject to energy conservation requirements.

B. Amendments To Implement an Efficacy Metric for All CFLKs

In this document DOE also proposes to include amendments to the CFLK test procedures that would expand the efficacy metric to all covered CFLKs in support of the amended standards being considered as part of the ongoing ECS rulemaking for CFLKs. In that rulemaking, DOE is proposing to require that all covered CFLKs meet minimum efficacy requirements, as is currently required for CFLKs in product class 1 and product class 2. 78 FR 16443. Thus, DOE proposes to establish a new appendix V1 and amend 10 CFR 429.33 and 10 CFR 430.23 to provide test procedures to measure the lamp efficacy of each basic model of a lamp type packaged with a CFLK and to measure the luminaire efficacy of each basic model of CFLK with integrated SSL circuitry. For CFLKs with both consumer replaceable lamps and integrated SSL circuitry, DOE proposes that each of the components individually must be tested for lamp or luminaire efficacy as applicable. DOE proposes that the use of the new appendix V1 and associated updates would be required concurrent with the compliance date of standards established by the ongoing ECS rulemaking for CFLKs. The following sections describe the change in metric for certain CFLKs and how DOE proposes measuring lamp and luminaire efficacy.

1. Proposed Metric

As noted previously, DOE's current CFLK energy conservation standards establish minimum CFLK efficiency in three different ways depending on product class: Lamp efficacy for product class 1, system efficacy for product class 2, and wattage for product class 3. This variation makes it difficult for consumers to compare the efficiency of different types of CFLKs. DOE is therefore proposing amendments to the CFLK test procedures to use a single metric (efficacy) to quantify the energy efficiency of all CFLKs. To the extent technologically feasible, DOE proposes to use lamp efficacy as the measure of efficiency, as described in this section.

In the public comments received in response to the framework document for the CFLK standards rulemaking,[9] stakeholders described problems with the current regulatory structure for product class 3 CFLKs. Hunter Fan Company (Hunter) argued that wattage limiters are prone to failure, thereby significantly increasing the costs associated with product warrantees. (Hunter Fan Company, No. 37 at p. 2).[10] A survey commissioned by the American Lighting Association (ALA) and submitted to DOE found that the added warranty cost due to servicing the failures of wattage limiters averaged $46.43 per claim. (ALA, No. 39 at p. 21).

DOE is sensitive to the concerns raised by stakeholders and recognizes that the maximum wattage limit approach currently prescribed for product class 3 CFLKs has limitations.

[8] Available at: *http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/ceilingfanlk_faq_2010-07-16.pdf.*

[9] Ceiling Fan and Ceiling Fan Light Kits Framework Document (*http://www.regulations.gov/#!documentDetail;D=EERE-2012-BT-STD-0045-0001*) and Notice of Public Meeting, **Federal Register**, 78 FR 16443 (March 15, 2013) (*http://www.regulations.gov/#!documentDetail;D=EERE-2012-BT-STD-0045-0002*).

[10] A notation in this form provides a reference for information that is in the docket of DOE's rulemaking to develop energy conservation standards for ceiling fans and ceiling fan light kits (Docket No. EERE–2012–BT–STD–0045). This notation indicates that the statement preceding the reference is included in document number 37 in the docket for the ceiling fans and ceiling fan light kits energy conservation standards rulemaking, at page 2.

Unlike efficacy, wattage alone gives no indication of the amount of lighting service (lumens) delivered per unit of power consumed (watts). Because consumers have traditionally associated wattage with brightness, consumers may erroneously believe that a product with a low wattage rating does not produce adequate light. Furthermore, DOE acknowledges the cost concerns and technology problems associated with wattage limiters that stakeholders raised. DOE further notes that wattage limiters are a potential failure point for CFLKs and may create design challenges for some CFLKs because of the physical space they require. Finally, DOE notes that wattage limiters may be unnecessary in CFLKs that use lighting technologies that are inherently high efficiency and/or wattage limiting.

As a result of these concerns, DOE proposes replacing wattage with efficacy as the metric for all CFLKs, including those currently in product class 3. Efficacy more accurately captures the efficiency of a light source by expressing the light output relative to the input power. The efficacy metric is universally used by lighting industry organizations (e.g., the National Electrical Manufacturers Association and the Illuminating Engineering Society) and governmental bodies (e.g., DOE, ENERGY STAR, California Energy Commission) to quantify and characterize the efficiency of both lamps and luminaires. Therefore, DOE proposes requiring efficacy, expressed in lumens per watt, as the efficiency metric for all CFLKs. For CFLKs with externally ballasted lamps (also known as non-integrated lamps), DOE proposes shifting from the current approach, which uses system efficacy as measured on the ballast packaged with the CFLK (appendix V), to one that uses lamp efficacy, as measured on a reference ballast.

As described in the preceding paragraphs, DOE proposes to use lamp efficacy as the basis of its energy efficiency standards for CFLKs where technically feasible. Where that is not possible (e.g., for CFLKs with integrated solid-state lighting circuitry), DOE proposes to use luminaire efficacy. DOE requests comments on its proposal to use lamp efficacy when technically feasible and otherwise luminaire efficacy to determine the efficiency of CFLKs.

2. Proposed Test Procedure

DOE notes that the large majority of CFLKs currently on the market are packaged with lamps for which DOE or industry test procedures exist. In this NOPR, DOE proposes test procedure updates to require an efficacy metric for all light sources packaged with CFLKs. For these test procedure updates, DOE also proposes to reference existing DOE test procedures and to reference industry standard test procedures only where DOE test procedures do not exist. As noted above, DOE proposes to minimize the overall lamps testing burden and update the CFLK test procedures by replacing references to ENERGY STAR test procedures with references to existing DOE lamp test procedures, where applicable. CFLKs that are packaged with lamps that have already been tested per DOE lamp test procedures may not require additional testing. For CFLKs with lamp types that do not have a corresponding current DOE test procedure, DOE proposes to reference current test procedures of the IES. The IES periodically updates its test procedures. Under the proposed approach, DOE would incorporate by reference a specific version of an IES test procedure (e.g., LM–79–08). In a future rulemaking, DOE may consider updating references to more recent versions of IES test procedures, if they exist; however, the required version would not change absent DOE rulemaking, even if the IES publishes an update to the test procedure.

Further, DOE is currently engaged in two test procedure rulemakings for lamp types that are used in CFLKs. Specifically, DOE is amending appendix W to update existing test procedures for medium base compact fluorescent lamps and to include test procedures for additional CFL metrics and CFL types, including externally-ballasted CFLs (i.e., non-integrated CFLs). DOE has also proposed a new appendix BB setting forth test procedures for integrated LED lamps.[11] DOE expects both of these appendices would be effective by the time that the new CFLK test procedure implementing a single efficacy metric for CFLKs (i.e., appendix V1 and associated CFR updates) would be effective. Therefore, DOE references these proposed appendices in the proposed amendments to the CFLK test procedures.

DOE notes that some CFLKs with solid-state lighting have designs for which it is not technically feasible to measure lamp efficacy without destructive disassembly of the CFLK circuitry and, even where it is possible to disassemble the lighting in a non-destructive manner, measurements may not be accurate or consistent representations of the light source efficacy. This applies to two cases: (1) CFLKs that have SSL drivers and/or light sources (e.g., an LED array or module) that are not consumer replaceable, and (2) CFLKs that have SSL drivers and light sources that are consumer replaceable, but the SSL driver and light source are separated by additional intermediate circuitry within the CFLK (e.g., wiring between a replaceable driver and a replaceable light source). DOE refers to these designs—which have light sources, drivers, or intermediate circuitry that is integrated into the CFLK—as ''CFLKs with integrated SSL circuitry'' and proposes to evaluate the efficiency of these CFLKs by measuring their luminaire efficacy.

DOE considered alternative approaches to quantifying CFLK efficiency for certain CFLKs with integrated SSL circuitry to determine if it was feasible to measure lamp efficacy, rather than luminaire efficacy, but determined that it is not. Specifically, some CFLK designs may have SSL light sources that are consumer replaceable (i.e., to facilitate repairs and maintenance) but LED drivers that are hardwired in the CFLK. For this scenario, DOE explored whether lamp efficacy could be measured on the consumer replaceable SSL light source using a ''reference driver'' in much the same way that reference ballasts are used for measuring the lamp efficacy of certain pin-based CFLs. However, SSL light sources do not have industry-specified reference drivers in the manner that CFLs have reference ballasts and, therefore, this method could result in varying efficacy measurements of the light source. Similarly, for designs with consumer replaceable SSL light sources and drivers, DOE considered measuring lamp efficacy of the combined consumer replaceable components, but this approach may also result in varying measurements of the light source efficacy depending on the additional SSL components packaged with the CFLK. Additionally, these types of measurements are outside the stated scope of IES LM–79–08, which addresses only luminaires and integrated LED lamps.

In the ongoing ECS rulemaking for CFLKs, DOE is considering that each lamp and/or integrated light source packaged with the CFLK meet prescribed minimum efficacy requirements. 78 FR 16443. For CFLKs that utilize multiple lamp models, DOE proposes that each lamp model be tested

[11] DOE published a NOPR on April 9, 2012 (77 FR 21038), a supplemental NOPR on June 3, 2014 (79 FR 32019), and a second supplemental NOPR on June 26, 2014 (79 FR 36242). Information on the LED lamps test procedure can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2011-BT-TP-0071.*

according to the corresponding lamp test procedure. For CFLKs that have both consumer replaceable lamps and integrated SSL circuitry, DOE proposes that the lamp efficacy of the consumer replaceable lamps be measured and that the luminaire efficacy of the CFLK integrated SSL circuitry be measured after the consumer replaceable lamps are removed. Each component would individually be required to meet the minimum standard. For CFLKs with dimmable lighting, DOE proposes that active mode testing be conducted at full power.

Table 2 summarizes the proposed active mode test procedures for determining efficacy.

TABLE 2—PROPOSED TEST PROCEDURES FOR CFLKS BASED ON LIGHTING TECHNOLOGY

Lighting technology	Lamp or luminaire efficacy measured	Referenced test procedure
Compact fluorescent lamps (CFLs)	Lamp Efficacy	Appendix W to Subpart B of 10 CFR 430.
Other (non-CFL) fluorescent lamps	Lamp Efficacy	IES LM–9–09.
Integrated LED lamps	Lamp Efficacy	Appendix BB to Subpart B of 10 CFR 430.
All Other SSL lamps	Lamp Efficacy	IES LM–79–08.
CFLKs with integrated SSL circuitry	Luminaire Efficacy	IES LM–79–08.

DOE requests comment on its proposal to measure luminaire efficacy for CFLKs with integrated SSL circuitry and to measure lamp efficacy for all other types of CFLKs.

DOE requests comment on its assessment that it is technically infeasible to measure the lamp efficacy of CFLKs with integrated SSL circuitry either because it would require destructive disassembly of the CFLK or measurement of consumer replaceable light source and driver, which would not result in valid representations of the light source efficacy.

DOE requests comment on its approach to testing CFLKs that have both consumer replaceable lamps and integrated SSL circuitry.

C. Standby Mode and Off Mode

As required by statute, DOE is addressing standby mode and off mode power consumption in this NOPR. EPCA defines ''standby mode'' as ''the condition in which an energy-using product—(I) is connected to a main power source; and (II) offers 1 or more of the following user-oriented or protective functions: (aa) To facilitate the activation or deactivation of other functions (including active mode) by remote switch (including remote control), internal sensor, or timer. (bb) Continuous functions, including information or status displays (including clocks) or sensor-based functions.'' (42 U.S.C. 6295(gg)(1)(A)(iii)) EPCA defines ''off mode'' as ''the condition in which an energy-using product—(I) is connected to a main power source; and (II) is not providing any standby or active mode function.'' (42 U.S.C. 6295(gg)(1)(A)(ii))

ALA provided comments on the framework document of the ongoing ECS rulemaking for CFLKs indicating that a ceiling fan without a wireless remote does not consume energy in off mode, and a ceiling fan with a wireless remote control has an average power consumption of 1.4 W in standby mode. (ALA, 39 at pg.13).

Based on a review of specification sheets of CFLKs on the market and data provided by ALA, DOE believes that CFLKs do not consume power in off mode, and that only CFLKs offering the functionality of a wireless remote control may consume power in standby mode. Because the standby sensor and controller nearly always provide functionality shared between the ceiling fan and the CFLK, DOE proposed in the framework document to account for the energy consumption in standby mode under the ceiling fan efficiency metric rather than under the CFLK efficiency metric. 78 FR 16443.

Further efforts to address standby energy usage in the CFLK test procedure may produce test results that are unnecessarily confusing to the consumer. If standby power were incorporated into a single efficiency metric, a CFLK with standby energy usage would have a different efficacy from the lamps packaged with it. Furthermore, two CFLKs with the same lamps, one with and one without a remote control, would have different efficacy ratings. This could be confusing to consumers and potentially misleading since remote controls often include dimmers, which may reduce active mode power consumption by allowing consumers to run lamps at less than full power. Additionally, DOE is concerned that requiring standby power testing for CFLKs in addition to standby power testing for ceiling fans would impose an unnecessary testing burden on manufacturers, given that the standby power consumption is shared between the ceiling fan and the CFLK, has its genesis in the ceiling fan, and can be captured in the ceiling fan test procedure alone. Therefore, DOE has tentatively concluded that standby energy usage for CFLKs is adequately addressed in the ceiling fan test procedure. For these reasons, DOE is not proposing a test procedure for standby mode power consumption for CFLKs in this NOPR. DOE requests comment on its approach to addressing standby power consumption in CFLKs.

D. Effective Date and Compliance Date for Amended Test Procedures

The effective date for any amended test procedures is 30 days after publication of any final test procedures in the **Federal Register**. (5 U.S.C. 553) The compliance date for the amended test procedures specified for appendix V would be 180 days after publication of the test procedure final rule in the **Federal Register**. The compliance date for appendix V1 would be concurrent with the ongoing ECS rulemaking for CFLKs. Manufacturers would be permitted to make representations based on testing in accordance with appendix V1 early, if such representations would demonstrate compliance with any amended energy conservation standards.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

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

B. Review Under the Regulatory Flexibility Act

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

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

DOE analyzed the burden to small manufacturers in both the context of the proposed modifications to the existing CFLK test procedures made in appendix V and associated CFR sections, as well as the in the context of the proposed test procedures to implement an efficacy metric for all covered CFLKs by establishing appendix V1 and amending associated CFR sections. With respect amendments to existing CFLK test procedures, DOE determined that proposed changes would not have a material impact on small U.S. manufacturers because the proposed changes would not alter the test procedures themselves, but rather, how they would be referenced. Consequently, DOE certifies that the proposed testing procedure amendments would not have a significant economic impact on a substantial number of small entities and the preparation of an IRFA is not warranted for these amendments.

With respect to proposed test procedures to implement an efficacy metric for all covered CFLKs, DOE found that because the proposed amendments would require efficiency performance testing of certain CFLKs that had not required testing previously, all manufacturers, including a substantial number of small manufacturers, would experience a financial burden associated with new testing requirements. Therefore, the preparation of an IRFA is required for these amendments. DOE has transmitted a copy of this IRFA to the Chief Counsel for Advocacy of the Small Business Administration for review.

The Small Business Administration (SBA) has set a size threshold for manufacturers, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. 65 FR 30836, 30849 (May 15, 2000), as amended at 65 FR 53533, 53545 (Sept. 5, 2000) and codified at 13 CFR part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.* CFLK manufacturing is classified under NAICS code 335210,[12] ''Small Electrical Appliance Manufacturing.'' SBA sets a threshold of 750 employees or less for an entity to be considered a small business for this category.

DOE conducted a focused inquiry into small business manufacturers of products covered by this rulemaking. To identify CFLK manufacturers, DOE reviewed ALA's list of ceiling fan manufacturers,[13] the ENERGY STAR Product Databases for Ceiling Fans,[14] the California Energy Commission's Appliance Database for Ceiling Fans,[15] the Federal Trade Commission's Appliance Energy Database for Ceiling Fans,[16] and DOE's Compliance Certification Database.[17] DOE then reviewed these data to determine whether the entities met the SBA's definition of a ''small business manufacturer'' of CFLKs and screened out companies that do not offer products subject to this rulemaking, do not meet the definition of a ''small business,'' or are foreign-owned and operated. Based on this review, and using data on the companies for which DOE was able to obtain information on the numbers of employees, DOE estimates that there are between 25 and 35 small business CFLK manufacturers in the U.S. DOE invites interested parties to comment on the number of small business manufacturers of CFLKs.

Based on the analysis described in the remainder of this section, DOE expects the proposed test procedures to implement an efficacy metric for all covered CFLKs to increase direct testing costs to small CFLK manufacturers, but that the savings from eliminating the design standard that requires wattage limiters for product class 3 CFLKs will likely more than offset these costs. DOE believes that, in sum, typical small manufacturers are likely to benefit financially from the proposed changes, as detailed below.

CFLK testing costs may also be impacted by the concurrent ceiling fans test procedure rulemaking, which has proposed a change in scope that could increase the number of CFLKs requiring testing. Specifically, in that rulemaking DOE is proposing to reinterpret the definition of ceiling fans to include hugger fans. If this proposed reinterpretation is adopted, products that provide light from hugger fans would fall under that statutory definition of CFLKs (42 U.S.C. 6291(50)) and, therefore, be subject to CFLK standards. If manufacturers use different CFLKs on their hugger fans than on their other ceiling fans, this could increase test burden. This IRFA therefore presents costs under two scenarios: One in which hugger fans are not included in the definition of ceiling fans, and another in which they are included.

DOE requires testing each basic model of a product to establish compliance with energy conservation standards. Products included in a single basic model must have essentially identical electrical, physical, and functional

[12] Although NAICS 335121, ''Residential Electric Lighting Fixture Manufacturing'' could also apply to CFLK manufacturers, DOE chose a NAICS code that applied to both ceiling fans and light kits because CFLK manufacturers are generally also ceiling fan manufacturers.

[13] The American Lighting Association, list of Manufacturers & Representatives (Available at: *http://www.americanlightingassoc.com/Members/Resources/Manufacturers-Representatives.aspx*).

[14] The U.S. Environmental Protection Agency and the U.S. Department of Energy, ENERGY STAR Ceiling Fans—Product Databases for Ceiling Fans (Available at: *http://www.energystar.gov/index.cfm?fuseaction=find_a_product.showProductGroup&pgw_code=CF*).

[15] The California Energy Commission, Appliance Database for Ceiling Fans (Available at: *http://www.appliances.energy.ca.gov/QuickSearch.aspx*).

[16] The Federal Trade Commission, Appliance Energy Databases for Ceiling Fans (Available at: *http://www.ftc.gov/bcp/conline/edcams/eande/appliances/ceilfan.htm*).

[17] The Department of Energy, Compliance Certification Database (Available at: *http://www.regulations.doe.gov/certification-data*).

characteristics that affect energy efficiency. Because the efficiency of CFLKs with integrated SSL circuitry is based on luminaire efficacy, variation in light kit designs will likely impact efficiency and result in a greater number of basic models for these types of CFLKs. Many aesthetic features that affect the optics of CFLKs with integrated SSL circuitry also affect their luminaire efficacy and, therefore, would require a new basic model. For CFLKs with consumer replaceable lamps, efficiency is based on lamp efficacy and will likely not be impacted by the design of the light kit, and thus the number of basic models may be limited for these types of CFLKs. Because these CFLKs require lamp testing, changes in luminaire optics, like lens choice, would not affect the measured efficacy, and therefore would not require a new basic model. For these CFLKs, manufacturers would be able to limit the testing burden by using the same lamp model for many CFLK models and/or by obtaining appropriate lamp test results from their lamp supplier(s).

To provide a framework for DOE's analysis, Table 3 summarizes the market share of different current CFLK product classes that would be affected by the proposed changes in testing requirements and avoided wattage limiter costs. The market share projections in Table 3 are for the expected compliance year of the ongoing ECS rulemaking for CFLKs (2019), when testing costs would be highest because both existing and new basic models need to be tested; in subsequent years testing would only be required on new basic models because manufacturers already would have tested existing basic models.

TABLE 3—PROJECTIONS OF CFLK MARKET SHARES IN 2019 FOR THE CURRENT PRODUCT CLASSES

[Excluding Hugger Fans]

Product class *	Percent of market in 2019	Current testing required	Proposed future testing	New testing costs?	Savings from removal of wattage limiter under proposal?
1	10	100% lamp efficacy	100% lamp efficacy	No	No.
3	90	None	70% lamp efficacy	Yes	Yes.
			30% luminaire efficacy	Yes	Yes.

* Product class 2 (light kits with pin-based sockets) is ignored for purposes of this analysis because its market share is insignificant, at less than 1 percent.

As shown in Table 3, the proposed test procedures do not affect testing burden for product class 1, because no new testing requirements are proposed for this product class; additionally, no savings related to wattage limiters are realized. Product class 2 (light kits with pin-based sockets) is ignored for purposes of this analysis because its market share is insignificant, at less than 1 percent. DOE assumes that 30 percent of product class 3 (socket types other than medium or pin-based) will transition to CFLKs with integrated SSL circuitry (requiring luminaire efficacy measurements) by 2019, while the remaining 70 percent will transition to CFLKs requiring lamp efficacy measurements.[18] Although testing burden would increase for product class 3 under the proposal, because the test procedures would be new for this class, removing the wattage limiter requirement would offset these costs.

If DOE changes its interpretation to include hugger fans in the scope of ceiling fans, this would effectively increase the size of the CFLK market by about 15 percent, and would be expected to lead to a corresponding increase in testing burden. That decision is outside of the scope of this rulemaking, and is therefore not the focus of this IRFA. This IRFA focuses on the additional testing costs and the avoided wattage limiter costs expected to result from the proposed CFLK test procedure amendments, and it considers these cost-benefit impacts for two cases: Case 1 does not include huggers in the scope of ceiling fans, while case 2 does include huggers in the scope of ceiling fans.

Table 4 summarizes the results of DOE's IRFA analysis for the two cases. In addition to presenting the estimated additional testing costs and the reduced wattage limiter costs that would result for the proposed amendments to CFLK test procedures, the table presents the assumptions underlying the calculations and intermediate results such as the estimated number of CFLKs sold by typical small CFLK manufacturers in the U.S. The table notes describe how DOE generated the inputs. The final results are rounded to two significant digits.

TABLE 4—COST-BENEFIT IMPLICATIONS OF PROPOSED TEST PROCEDURES IN APPENDIX V1 FOR TYPICAL SMALL MANUFACTURERS

	Case 1 no hugger fans	Case 2 with hugger fans
Total Annual CFLK Shipments [1]	19,000,000	21,850,000
Percent of Shipments Attributed to Small Manufacturers [2]	15%	15%
Number of Small Manufacturers Producing CFLKs [2]	30	30
Number of CFLKs Sold by Typical Small Manufacturers [3]	95,000	109,250
Number of Basic Models Sold by Typical Small Manufacturer [4]	15	17
Units Sold per Basic Model [3]	6,333	6,426

[18] DOE estimated that between 15% and 40% of the CFLK market in 2019 would be CFLKs with integrated SSL circuitry. The lower bound of the estimated range was based on the reference case projection of LED penetration in Navigant Consulting, Inc.'s report, *Energy Savings Potential for Solid-State Lighting in General Illumination Applications*, U.S. Department of Energy, January 2012. Half of the LED penetration from that report was assumed to come from CFLKs with integrated SSL circuitry and the other half from LED lamps. The higher bound of the estimated range was based on manufacturer estimates of the market share of integral-LED CFLKs in 2018 from manufacturer interviews. For this analysis, DOE assumed a rounded mid-point value: That 27% of all CFLKs would have integrated SSL circuitry (30% of CFLKs in product class 3).

TABLE 4—COST-BENEFIT IMPLICATIONS OF PROPOSED TEST PROCEDURES IN APPENDIX V1 FOR TYPICAL SMALL MANUFACTURERS—Continued

	Case 1 no hugger fans	Case 2 with hugger fans
Percent of Market Requiring New Lamp Testing [5]	63%	64%
Percent of Market Requiring New Luminaire Testing [5]	27%	27%
Percent of Market Benefitting for Removal of Wattage Limiter [5]	90%	90%
Percent of Basic Models Requiring New Lamp Efficacy Testing [6]	50%	50%
Average Number of New Lamp Tests Required per Typical Small Manufacturer [3]	4.7	5.4
Average Number of New Luminaire Tests Required per Small Manufacturer [3]	4.1	4.7
Testing cost per Basic Lamp Model [7]	$3,000	$3,000
Testing cost per Basic Luminaire Model [8]	$750	$750
Cost of a Wattage Limiter [9]	$1.50	$1.50
Total 1st Year Cost of Additional Testing per Typical Small Manufacturer as a Result of CFLK Test Procedure Amendments [3]	$17,000	$20,000
Total Annual Savings from Wattage Limiter Removal per Typical Small Manufacturer as a Result of CFLK Test Procedure Amendments [3]	$130,000	$150,000

(1) This estimate is based on historical shipments of low-volume ceiling fans (LVCF) derived from: (1) Data from *Appliance* magazine's Statistical Review from the period 1991–2006, (2) data from Energy Star Annual Reports from the period 2003–2011, (3) and data purchased from NPD Research Group from 2007–2011. CFLK shipments are assumed to be 88% of LVCF shipments based on sales of LVCFs with and without CFLKs. Shipments in 2019 are based on a stock turnover model that accounts for replacements of retired units in existing stock, installations in new construction, and the addition of CFLKs to existing buildings.

(2) The estimate is based on market shares of CFLK brands derived from NPD Research Group and limited publicly available data on small CFLK businesses.

(3) This value is calculated from other values in this table.

(4) This estimate is based on a review of manufacturer Web sites.

(5) For the no-hugger fans case, these values follow from the market breakdown shown in Table 3. For the hugger-fans case, the ''Percent of Market'' values in Table 3 were adjusted to account for a 15% increase in market size associated with CFLKs on hugger fans, assuming that 70% of the hugger CFLKs use lamps only and 30% are integral SSL.

(6) This estimate is based on the assumption that for 50% of lamp models used in CFLKs, appropriate test results will be available, precluding the need for additional testing.

(7) This estimate assumes 10 lamp samples tested at $300 per test.

(8) This estimate assumes 2 luminaire samples tested at $375 per test.

(9) This estimate conservatively is based on the low end of wattage limiter prices available for sale on the Internet.

DOE estimates that the proposed test procedures would increase direct testing costs by approximately $17,000 to $20,000 for a typical small manufacturer in the first year of required compliance, depending on whether hugger fans are excluded or included in the definition of ceiling fans. DOE expects testing costs to be lower in subsequent years as testing would only be needed for newly introduced basic models of CFLKs since existing basic models would already have the necessary test results for certification. DOE estimates that the elimination of wattage limiters would yield a typical small manufacturer approximately $110,000 to $130,000 in reduced manufacturing costs in that year.

The degree to which testing costs are offset by savings from the elimination of the wattage limiter requirement depends significantly on the number of CFLKs produced per basic model. That is, testing costs are fixed per basic model, but the costs associated with the wattage limiter requirement increase in direct proportion with the total number of CFLKs subject to the requirement. As shown in Table 4, DOE estimates that small manufacturers typically produce about 6,300 to 6,400 CFLKs per basic model per year, and that they are likely to see a net financial benefit from the proposed changes provided that they produce more than approximately 850 CFLK units per basic model.

In summary, DOE notes that the estimated savings of the proposed test procedures greatly exceed the estimated costs to small manufacturers. While these estimates are based on a number of projections and assumptions which have inherent uncertainties, given the degree to which projected savings exceed projected costs, DOE tentatively concludes that the test procedures proposed to implement an efficacy metric for all covered CFLKs will not increase compliance costs for small manufacturers of CFLKs. DOE requests input on its tentative conclusion that the test procedures proposed in appendix V1 will not increase compliance costs for small manufacturers of CFLKs.

In developing amendments to the CFLK test procedures, DOE has attempted to avoid conflicts with other rules and regulations. Certain CFLKs utilize lamps that are subject to DOE standards and test procedures as specified in lamp rulemakings. As described in preceding sections, to avoid conflicts with existing DOE regulations, the test procedures proposed in this NOPR reference existing test procedures for these types of CFLKs. DOE is not aware of any other Federal rules that duplicate, overlap or conflict with these test procedures.

DOE considered alternatives to the proposed test procedures for CFLKs with integrated SSL circuitry to determine if it was feasible to measure lamp efficacy rather that luminaire efficacy. Specifically, DOE explored the possibility of testing the consumer replaceable SSL light sources drivers for CFLKs with integrated SSL circuitry rather testing the entire CFLK. DOE explored the possibility of adopting IES LM–82, ''Characterization of LED Light Engines and LED Lamps for Electrical and Photometric Properties as a Function of Temperature,'' for CFLKs with integrated SSL circuitry. Such a method would potentially reduce testing costs (particularly if the same LED module and driver were used in multiple basic models of CFLKs) and would yield test procedures more analogous to the test procedures proposed for all other CFLK types. DOE believes this approach is not technically feasible, however, because: (1) DOE could not be certain that test results of the LED module and driver would accurately represent the performance of the system when it was installed in the CFLK because the CFLK could provide heat sinking to the LED module in a

manner that affected performance; and (2) it was not clear that it would be possible to test for compliance without destructively altering the product being tested because in some CFLK designs LED modules and drivers are highly integrated into the CFLK. Furthermore, DOE was not able to determine if such an approach would increase or decrease testing burden.

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

C. Review Under the Paperwork Reduction Act of 1995

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

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

D. Review Under the National Environmental Policy Act of 1969

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

E. Review Under Executive Order 13132

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

F. Review Under Executive Order 12988

When reviewing existing regulations or promulgating new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice

and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *http://energy.gov/gc/office-general-counsel.* DOE examined today's proposed rule according to UMRA and its statement of policy and determined these requirements do not apply because the rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year.

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

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

I. Review Under Executive Order 12630

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

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

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

K. Review Under Executive Order 13211

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

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

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

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

The proposed rule would incorporate testing methods contained in the following commercial standards: IES LM–66–2011, ''IES Approved Method Electrical and Photometric Measurements of Single-Ended Compact Fluorescent Lamps'' and IES LM–79–2008, ''IES Approved Method Electrical and Photometric Measurements of Solid-State Lighting Products.'' The Department has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA, (i.e., that they were developed in a manner that fully provides for public participation, comment, and review). DOE will consult with the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

V. Public Participation

A. Attendance at the Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov.* As explained in the **ADDRESSES** section, foreign nationals visiting DOE Headquarters are subject to advance security screening procedures.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site, *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/66.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Requests To Speak and Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this notice. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make a follow-up contact, if needed.

C. Conduct of the Public Meeting

Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 so that the necessary procedures can be completed. DOE requires visitors to have laptops and other devices, such as tablets, checked upon entry into the building. Please report to the visitor's desk to have devices checked before proceeding through security.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS), there have been recent changes regarding ID requirements for individuals wishing to enter Federal buildings from specific states and U.S. territories. Driver's licenses from the following states or territory will not be accepted for building entry and one of the alternate forms of ID listed below will be required.

DHS has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, American Samoa, Arizona, Louisiana, Maine, Massachusetts, Minnesota, New York, Oklahoma, and Washington.

Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by the states of Minnesota, New York or Washington (Enhanced licenses issued by these states are clearly marked Enhanced or Enhanced Driver's License); a military ID or other Federal government issued Photo-ID card.

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this notice. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

Submitting comments via regulations.gov. The regulations.gov Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to regulations.gov information for which disclosure is restricted by statute, such as trade secrets and confidential commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through regulations.gov cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through regulations.gov before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that regulations.gov provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to regulations.gov. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and free of any defects or viruses. Documents should not contain special characters or

any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. DOE requests comments on the proposed changes for existing test procedures for CFLKs packaged with medium screw base lamps.

2. DOE requests comments on the proposed changes for existing test procedures for CFLKs packaged with pin-based fluorescent lamps.

3. DOE requests comment on replacing references to ENERGY STAR documents with the specific requirements from the ENERGY STAR documents referenced in CFLK energy conservation standards, codified in 10 CFR 430.32(s)

4. DOE requests comment on its withdrawal of current guidance on accent lighting in CFLKs and proposal to consider all lighting packaged with all CFLKs to be subject to energy conservation requirements.

5. DOE requests comments on its proposal to use lamp efficacy when technically feasible and otherwise luminaire efficacy to determine the efficiency of CFLKs.

6. DOE requests comment on its proposal to measure luminaire efficacy for CFLKs with integrated SSL circuitry and to measure lamp efficacy for all other types of CFLKs.

7. DOE requests comment on its assessment that it is technically infeasible to measure the lamp efficacy of CFLKs with integrated SSL circuitry either because it would require destructive disassembly of the CFLK or measurement of consumer replaceable light source and driver, which would not result in valid representations of the light source efficacy.

8. DOE requests comment on its approach to testing CFLKs that have both consumer replaceable lamps and integrated SSL circuitry.

9. DOE requests comment on its approach to addressing standby power consumption in CFLKs.

10. DOE invites interested parties to comment on the number of small business manufacturers of CFLKs.

VI. Approval of the Office of the Secretary

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

List of Subjects

10 CFR Part 429

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

10 CFR Part 430

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

Issued in Washington, DC, on October 27, 2014.

Kathleen B. Hogan,

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

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

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

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

Authority: 42 U.S.C. 6291–6317.

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

§ 429.33 Ceiling fan light kits.

(a) *Sampling plan for selection of units for testing.*

(1) The requirements of § 429.11 are applicable to ceiling fan light kits, except that, for ceiling fan light kits subject to a design standard, each unit must meet the design standard; and

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

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

(ii) For ceiling fan light kits with medium screw base sockets that are packaged with integrated light-emitting diode lamps, the represented values of each basic model of lamp packaged with the ceiling fan light kit shall be determined in accordance with § 429.56 [proposed at 79 FR 36242 (June 26, 2014)].

(iii) For ceiling fan light kits with pin-based sockets that are packaged with fluorescent lamps, the represented values shall be determined in accordance with the sampling and statistical requirements in § 429.35.

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

(v) For ceiling fan light kits with sockets or packaged with lamps other than those described in paragraph

(a)(2)(i), (ii), (iii), and (iv) of this section, each unit must comply with the applicable design standard in § 430.32(s)(4).

(3) For each basic model of ceiling fan light kit, the following requirements are applicable for compliance with amended energy conservation standards, if established:

(i) For ceiling fan light kits packaged with compact fluorescent lamps, the represented values of each basic model of lamp shall be determined in accordance with § 429.35.

(ii) For ceiling fan light kits packaged with general service fluorescent lamps, the represented values of each basic model of lamp shall be determined in accordance with § 429.27.

(iii) For ceiling fan light kits packaged with incandescent lamps, the represented values of each basic model of lamp shall be determined in accordance with § 429.27.

(iv) For ceiling fan light kits packaged with integrated LED lamps, the represented values of each basic model of lamp shall be determined in accordance with § 429.56.

(v) For ceiling fan light kits packaged with other fluorescent lamps (not compact fluorescent lamps or general service fluorescent lamps), the represented values of each basic model of lamp shall be determined in accordance with the sampling and statistical requirements in § 429.35.

(vi) For ceiling fan light kits packaged with other SSL lamps (not integrated LED lamps), the represented values of each basic model of lamp shall be determined in accordance with the sampling and statistical requirements in § 429.56.

(vii) For each basic model of ceiling fan light kit with integrated SSL circuitry, a sample of sufficient size shall be randomly selected and tested to ensure that any represented value of the energy efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

A. The mean of the sample, where:

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

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

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

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

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

* * * * *

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

Authority: 42 U.S.C. 6291–6317.

■ 4. Section 430.3 is amended by:
■ a. Removing paragraph (l)(2);
■ b. Redesignating (l)(3), (l)(4) and (l)(5) as (l)(2), (l)(3) and (l)(4);
■ c. Amending paragraph (n)(2) by removing ''and appendix R to subpart B'' and adding in its place, ''and appendices R, V and V1 of subpart B''; and
■ d. Adding new paragraphs (n)(8) and (n)(9)
■ e. Removing (t)(1); and
■ f. Redesignating (t)(2) as (t)(1) and reserving paragraph (t)(2).

The additions read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(n) * * *

(8) IES LM–66–11, (''IES LM–66''), IES Approved Method for the Electrical and Photometric Measurement of Single-Ended Compact Fluorescent Lamps, approved April 11, 2011; IBR approved for appendix V to subpart B.

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

* * * * *

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

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

* * * * *

(x) *Ceiling fan light kits.*

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

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

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

(iii) For a ceiling fan light kit with pin-based sockets that is packaged with fluorescent lamps, measure system efficacy in accordance with section 4 of appendix V of this subpart. Express system efficacy in lumens per watt and round to the nearest tenth of a lumen per watt.

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

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

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

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

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

(iv) For a ceiling fan light kit packaged with integrated LED lamps, measure lamp efficacy in accordance with paragraph (dd) of this section.

(v) For a ceiling fan light kit packaged with other fluorescent lamps (not compact fluorescent lamps or general service fluorescent lamps), packaged with other SSL lamps (not integrated LED lamps) or with integrated SSL circuitry, measure efficacy in accordance with section 3 of appendix V1 of this subpart. Express each result in lumens per watt and round to the nearest tenth of a lumen per watt.

* * * * *

■ 6. Appendix V to Subpart B of Part 430 is revised to read as follows:

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

After [DATE 30 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] and prior to [DATE 180 DAYS AFTER PUBLICATION OF

THE FINAL RULE IN THE **FEDERAL REGISTER**], manufacturers must make any representations with respect to the energy use or efficiency of ceiling fan light kits with pin-based sockets for fluorescent lamps in accordance with the results of testing pursuant to this Appendix V or the procedures in Appendix V as it appeared at 10 CFR part 430, subpart B, Appendix V, in the 10 CFR parts 200 to 499 edition revised as of January 1, 2014. After [DATE 180 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE], manufacturers must make any representations with respect to energy use or efficiency of ceiling fan light kits with pin-based sockets for fluorescent lamps in accordance with the results of testing pursuant to this appendix to demonstrate compliance with the energy conservation standards at 10 CFR 430.32(s)(3).

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

1. Scope:

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

2. Definitions

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

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

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

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

3. Test Apparatus and General Instructions:

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

Any lamp satisfying this description:	must conform to the requirements of:	and be tested on the lamp ballast platform packaged with the CFLK, as allowed in:
Compact fluorescent lamp	sections 4.0–11.0 of IES LM–66–11 (Incorporated by reference, see § 430.3).	section 7.0 of IES LM-66-11 (incorporated by reference, see § 430.3).
Any other fluorescent lamp	sections 3.0—6.0 of IES LM–9–09 (Incorporated by reference, see § 430.3).	section 5.4 of IES LM–9–09 (incorporated by reference, see § 430.3).

4. Test Measurement and Calculations:

Measure system efficacy as follows and express the result in lumens per watt:

Lamp type	Method
Compact fluorescent lamp	Measure system efficacy according to IES LM–66–11 (incorporated by reference; see § 430.3). Use of a goniophotometer is not permitted.
Any other fluorescent lamp	Measure system efficacy according to IES LM–9–09 (incorporated by reference; see § 430.3). Use of a goniophotometer is not permitted.

5. Rounding

Round system efficacy for the individual test unit to the nearest tenth of a lumen per watt.

■ 7. Appendix V1 is added to Subpart B of Part 430 to read as follows:

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

Note: Any representations about the energy use or efficiency of any ceiling fan light kit packaged with other fluorescent lamps (not compact fluorescent lamps or general service fluorescent lamps), packaged with other SSL lamps (not integrated LED lamps), or with integrated SSL circuitry made on or after the compliance date of any amended energy conservation standards must be made in accordance with the results of testing pursuant to this appendix.

1. Scope

This appendix establishes the test requirements to measure the energy efficiency of all ceiling fan light kits (CFLKs) packaged with other fluorescent lamps (not compact fluorescent lamps or general service fluorescent lamps), packaged with other SSL lamps (not integrated LED lamps), or with integrated SSL circuitry. Measure all lighting associated with these CFLKs according to the test procedures in this appendix.

2. Definitions

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

2.2. *Other SSL products* means solid-state lighting lamps that are not integrated LED lamps or CFLKs with integrated SSL circuitry, as defined in this section. ''Other SSL products'' includes integrated LED lamps with non-ANSI-standard bases (e.g., Zhaga interfaces).

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

2.4. *Consumer replaceable* means items such as lamps or ballasts which a typical consumer could replace with relative ease, without the cutting of wires, use of a soldering iron, or damage to or destruction of the CFLK.

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

3. Test Conditions and Measurements

For any CFLK that utilizes consumer replaceable lamps, measure the lamp efficacy of each basic model of lamp packaged with the CFLK. For any CFLK only with integrated

SSL circuitry, measure the luminaire efficacy of the CFLK. For any CFLK that includes both consumer replaceable lamps and integrated SSL circuitry, measure both the lamp efficacy of each basic model of lamp packaged with the CFLK and the luminaire efficacy of the CFLK with all consumer replaceable lamps removed. Measurements should be taken at full light output. Use of a goniophotometer is prohibited. For each test, use the test procedures in the table below.

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

4. Rounding

Round lamp efficacy and/or luminaire efficacy for the individual test unit to the nearest tenth of a lumen per watt.

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

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

* * * * *

(s) * * *

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

(ii) The screw-based lamps required under paragraph (2)(i) of this section must—

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

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

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

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

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

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

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DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2014–BT–STD–0049]

RIN 1904–AD38

Energy Conservation Program: Procedures, Interpretations, and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products

AGENCY: Office of Energy Efficiency and Renewable Energy, DOE.

ACTION: Request for information (RFI).

SUMMARY: Through this RFI, the U.S. Department of Energy (DOE) is commencing a notice-and-comment rulemaking to consider amending its ''Process Improvement Rule,'' with specific focus to clarify its process related to the promulgation of direct final rules (DFRs). The issues for discussion and public comment in this RFI include those raised in recent litigation concerning energy conservation standards for gas furnaces, central air conditioners and heat pumps, which has since been settled.

DATES: DOE will accept comments, data, and information responding to this RFI submitted no later than December 30, 2014.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2014–BT–STD–0049 or regulatory information number (RIN) 1904–AD38, by any of the following methods.

1. *Email: ConsumerProducts2014STD0049@ee.doe.gov.* Include the RIN (1904–AD38) in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.

2. *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disk (CD), in which case it is not necessary to include printed copies.

3. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Phone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Instructions: All submissions received must include the agency name and docket number and/or RIN for this rulemaking. No facsimiles (faxes) will be accepted.

Docket: A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2014-BT-STD-0049.* This Web page contains a link to the docket for this rulemaking on the *www.regulations.gov* site. The *www.regulations.gov* Web page will contain instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT:

Mr. John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Ave. SW., Washington, DC 20585–0121. Telephone: (202) 287–1692. Email: *John.Cymbalsky@ee.doe.gov.*

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

For further information on how to submit a comment and review other public comments, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

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I. Authority and Background

The Department of Energy's appliance standard program is conducted pursuant to Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (Pub. L. 94–163, 42 U.S.C. 6291, *et seq.* ''EPCA''). Under EPCA,[2] the energy conservation program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. In 1987, EPCA was amended to establish by law national efficiency standards for certain appliances and a schedule for DOE to conduct rulemakings to periodically review and update these standards. National Appliance Energy Conservation Act, Pub. L. 100–12 (1987). The standards must be designed to ''achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified.'' (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must ''result in significant conservation of energy.'' (42 U.S.C. 6295(o)(3)(B))

DOE typically prescribes energy conservation standards by informal, notice-and-comment, rulemaking proceedings, consistent with the Administrative Procedure Act (APA) and EPCA. DOE has codified this process in its regulations at 10 CFR part 430, subpart C, appendix A through a final rule promulgated on July 15, 1996, titled ''Procedures, Interpretations and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products'' (''Process Improvement Rule''). 61 FR 36974.

The Energy Independence and Security Act of 2007 (Pub. L. 110–140) amended EPCA, in relevant part, to grant DOE authority to issue a direct final rule (DFR) to establish energy conservation standards. A DFR is a rulemaking proceeding in which an agency issues a final rule without an opportunity for prior public comment. DOE may issue a DFR upon receipt of a joint proposal from a group of ''interested persons that are fairly representative of relevant points of view,'' provided DOE determines the energy conservation standards recommended in the joint proposal conform with the requirements of 42 U.S.C. 6295(o).[3] (42 U.S.C. 6295(p)(4)(A)) Simultaneous with the issuance of a DFR, DOE must also issue a notice of proposed rulemaking (NOPR) containing the same energy conservation standards in the DFR. Following publication of the DFR, DOE must solicit public comment for a

[1] This part was originally titled Part B. It was redesignated Part A in the United States Code for editorial reasons.

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

[3] DOE must issue simultaneously a notice of proposed rulemaking (NOPR) identical to the DFR. (42 U.S.C. 6295(p))

period of at least 110 days; then, not later than 120 days after issuance of the DFR, the Secretary must determine whether any adverse comments ''may provide a reasonable basis for withdrawing the DFR,'' based on the rulemaking record and specified statutory provisions. (42 U.S.C. 6295(p)(4)(B), (C)(i)) Upon withdrawal, the Secretary must proceed with the rulemaking process under the NOPR that was issued simultaneously with the DFR and publish the reasons the DFR was withdrawn. (42 U.S.C. 6295(C)(ii)) If the Secretary determines not to withdraw the DFR, it becomes effective as specified in the original issuance of the DFR.

DOE exercised this authority by publishing a DFR on June 27, 2011 (''2011 DFR'') that established energy conservation standards for residential furnaces, central air conditioners, and heat pumps (collectively referred to as heating, ventilating, and air conditioning (HVAC) products), including regional standards for particular types of products in specified States. 76 FR 37408.[4] In response, American Public Gas Association filed a petition for review in the D.C. Circuit on December 23, 2011, challenging the validity of the rule. Various environmental and commercial interest groups joined each side of the case, reflecting various viewpoints.

On March 11, 2014, all parties filed a joint motion presenting final terms of settlement in the case (''Joint Motion''). Among other things, the Joint Motion tasked DOE with initiating a notice-and-comment rulemaking proceeding to clarify its process related to the promulgation of DFRs by amending the DOE Process Improvement Rule.[5] The D.C. Circuit granted the Joint Motion on April 24, 2014. *American Public Gas Ass'n* v. *U.S. Dep't of Energy*, No. 11–1485 (D.C. Cir.).

To fulfill its responsibilities under the Joint Motion, DOE is initiating a notice-and-comment rulemaking proceeding to clarify its process related to DFRs by publishing this RFI. As per the Joint Motion, this RFI includes, *verbatim*, material submitted by letter from certain entities participating in the litigation, including Heating, Air-Conditioning & Refrigeration Distributors International (HARDI), Air-Conditioning, Heating, and Refrigeration Institute (AHRI), and Air Conditioning Contractors of America (ACCA), which is appended to this RFI. DOE will evaluate the comments received and undertake a further notice-and-comment process to consider amending the Process Improvement Rule to explicitly address DFRs.

II. Issues on Which DOE Seeks Comment and Information

In this RFI, DOE intends to gather the information necessary to undertake a further notice-and-comment process to consider DFR-related amendments to the Process Improvement Rule. DOE specifically invites public comment on three issues: (1) When a joint statement with recommendations related to an energy or water conservation standard would be deemed to have been submitted by ''interested persons that are fairly representative of relevant points of view,'' thereby permitting use of the DFR mechanism; (2) the nature and extent of ''adverse comments'' that may provide the Secretary a reasonable basis for withdrawing the DFR, leading to further rulemaking under the accompanying NOPR; and (3) what constitutes the ''recommended standard contained in the statement,'' and the scope of any resulting DFR. Each area of public comment is explained in more detail below.

A. Interested Persons

Under EPCA, DOE may use the DFR mechanism ''[o]n receipt of a statement that is submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates), as determined by the Secretary, and contains recommendations with respect to an energy or water conservation standard.'' (42 U.S.C. 6295(p)(4)(A)) In the 2011 DFR, DOE determined that a consensus agreement submitted by a broad cross-section of manufacturers who produced the subject HVAC products, their trade associations, and environmental and energy-efficiency advocacy organizations (''Consensus Agreement'') constituted the joint statement required by EPCA.[6] 76 FR 37408, 37422 (June 27, 2011). DOE did not read EPCA as requiring absolute agreement by all interested parties, since the Secretary has discretionary authority to determine if a joint agreement meets the requirement for representativeness. *Id.* DOE also reasoned that no single party should be deemed to have a veto power over use of the DFR mechanism. *Id.* Consequently, DOE considers consensus agreements on a case-by-case basis to determine if they meet the statutory requirements.

In this RFI, DOE specifically requests comments on its DFR process, as reflected in the 2011 DFR determination. DOE also requests general comments on factors supporting a determination that DOE has received a ''joint statement'' submitted by ''interested persons that are fairly representative of relevant points of view.''

B. Adverse Comments

Under EPCA, the Secretary shall withdraw a DFR no later than 120 days after publication (110 days for comment submittal, 10 days for comment review period) if (1) ''the Secretary receives 1 or more adverse public comments relating to the direct final rule;'' and (2) ''based on the rulemaking record . . . the Secretary determines that such adverse public comments or alternative joint recommendation may provide a reasonable basis for withdrawing the direct final rule.'' (42 U.S.C. 6295(p)(4)(C)(i))[7]

To meet this requirement in the 2011 DFR, DOE created a balancing test. DOE considered the substance of all adverse comments received (rather than quantity) and weighed them against the anticipated benefits of the Consensus Agreement and the likelihood that further consideration of the comments would change the results of the rulemaking. 76 FR 37408, 37422 (June 27, 2011). DOE did not consider adverse comments that had been previously raised and addressed at an earlier stage in the rulemaking proceeding. *Id.*

DOE requests comments on the balancing test approach to managing adverse comments, as articulated in the 2011 DFR. DOE also requests comments on the nature and extent of such ''adverse comments'' that may provide the Secretary a reasonable basis for withdrawing the DFR.

C. Recommended Standard

Under EPCA, the Secretary must determine that a ''recommended standard contained in the statement'' satisfies the statutory requirements of 42 U.S.C. 6295(o). (42 U.S.C. 6295(p)(4)(A)(i)) This determination requires the same type of analysis that DOE conducts whenever it considers energy conservation standards.

[4] This rule became effective on October 25, 2011, following a determination issued by DOE on October 24, 2011. 76 FR 67037 (Oct. 31, 2011).

[5] Under the terms of the joint motion, DOE must initiate this notice-and-comment rulemaking within 180 days of a D.C. Circuit judgment implementing the agreement.

[6] Although States were not signatories to the Consensus Agreement, they did not express any opposition to it. 76 FR 37408, 37422 (June 27, 2011).

[7] If the DFR is withdrawn, the Secretary will proceed with the rulemaking process under the NOPR that was issued simultaneously with the DFR. (42 U.S.C. 6295(p)(4)(C)(ii)).

Accordingly, in the 2011 DFR, DOE certified that the energy conservation standard adopted achieved the ''maximum improvement in energy efficiency that is technologically feasible and economically justified and will result in significant conservation of energy.'' 42 U.S.C. 6295(o); 76 FR 37408, 37422 (June 27, 2011). Accordingly, DOE adopted the amended energy conservation standards for residential central air conditioners, heat pumps, and furnaces. 76 FR 37408, 37422 (June 27, 2011).

DOE requests comments on what constitutes the ''recommended standard contained in the statement,'' as well as the scope of any resulting DFR.

Although comment is particularly welcome on the issues discussed above, DOE also requests comments on any other topics pertaining to the DFR process.

III. Public Participation

DOE invites all interested parties to submit, in writing by December 30, 2014, comments and information on matters addressed in this rulemaking and on other matters relevant to the DFR process. As per the Joint Motion, this RFI includes, *verbatim*, material submitted by letter from certain entities participating in the litigation, including HARDI, AHRI, and ACCA, which is appended to this RFI. After the close of the comment period, DOE will begin collecting data and reviewing the public comments. These actions will be taken to aid in the potential development of a Process Improvement Rule NOPR.

DOE considers public participation to be a very important part of the process for developing rules. DOE actively encourages the participation and interaction of the public during the comment period at each stage of the rulemaking process. Interactions with and between the members of the public provide a balanced discussion of the issues and assist DOE in the rulemaking process.

Confidential Business Information

Pursuant to 10 CFR 1004.11, any person submitting information he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination. Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

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

Kathleen B. Hogan,

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

Appendix A: Material Submitted by Entities Participating in Litigation

As per the Joint Motion, this RFI includes, *verbatim*, material submitted by letter from certain entities participating in the litigation, including HARDI, (AHRI, and ACCA. DOE received the materials directly from the entities listed above. These materials represent the views of those entities. DOE has not altered or edited these letters in any way other than formatting necessary for publication in the **Federal Register**.

A. HARDI Letter (October 9, 2014)

October 9, 2014.

Mr. Daniel Cohen, U.S. Department of Energy Building Technologies Program, 1000 Independence Avenue SW., Washington, DC 20585

Re: U.S. Department of Energy (DOE) Request for Information Regarding Direct Final Rule (DFR) Process Pursuant to 42 U.S.C. 6295 (p)(4)

Mr. Cohen, Thank you for the opportunity to provide the U.S. Department of Energy (''DOE''), all stakeholders, and the general public with the views of the Heating, Air-Conditioning & Refrigeration Distributors International (''HARDI'') regarding DOE's direct final rulemaking (''DFR'') authority under the Energy Policy and Conservation Act, 42 U.S.C. 6201–6422, as amended (''EPCA'') and, specifically, EPCA's DFR provision, codified at 42 U.S.C. 6295(p)(4).

Experience has shown that EPCA's DFR process can be both a boon and a bane to not only stakeholders but also DOE. On the one hand, there are circumstances where use of the DFR process benefits all involved, not only allowing DOE to set energy-efficiency standards on an expedited basis using a less resource-intensive alternative to normal notice and comment rulemaking, but also allowing affected stakeholders to work together to craft a proposal for energy-efficiency standards that not only meet EPCA's statutory requirements but accommodate the needs of all involved. Indeed, used appropriately, the DFR process can serve as a vehicle through which industry can work with efficiency and environmental advocates to craft and propose standards that are both technically and economically feasible and result in tremendous energy savings. By the same token, EPCA's DFR process is susceptible to overuse and could be mistakenly employed to establish highly controversial and impracticable energy-conservation standards over substantial stakeholder objection based on an agreement among a narrow subset of interested parties, which excludes input from a broad array of affected stakeholders. DOE's Plan for Clarification of DOE Direct Final Rule Process provides an opportunity to achieve a constructive balance between under- and overuse of the DFR process, reflecting EPCA's DFR provision's statutory text, purpose, and legislative history.

We look forward to working with DOE to clarify the DFR process through common-sense, practical regulations reconciling the due process-based procedural safeguards of normal notice and comment rulemaking with the worthy goal of expediting the process if, but only if, there is a genuine consensus agreement among all affected stakeholders. To this end, HARDI respectfully submits its views, and the reasons for those views, on the following issues:

(1) When a joint statement with recommendations related to an energy or water conservation standard would be deemed to have been submitted by ''interested persons that are fairly representative of relevant points of view,'' thereby permitting use of the DFR mechanism;

(2) the nature and extent of ''adverse comments'' that may provide the Secretary a reasonable basis for withdrawing the DFR, leading to further rulemaking under the accompanying notice of proposed rulemaking (''NOPR''); and

(3) what constitutes the ''recommended standard contained in the statement,'' and the scope of any resulting DFR.

I. Importance of Clarification of DOE's Direct Final Rule Process to General Public, Consumers, and Industry Stakeholders

By way of background, DOE's Plan for Clarification of DOE Direct Final Rule Process arose from the settlement of a lawsuit, American Public Gas Association (APGA) v. DOE, No. 11–1485 (D.C. Cir.). In brief, DOE received a joint comment from a narrow subset of interested parties and used this as the basis for issuing a DFR setting highly controversial energy-efficiency standards for furnaces, air conditioners, and heat pumps in June 2011. HARDI and other

''interested persons'' were not part of the negotiations leading to the joint comment and did not agree to the energy-efficiency standards it proposed. DOE subsequently received over thirty adverse comments, including comments from HARDI and other stakeholders, pointing out substantial issues of concern. Ultimately, this led to protracted litigation involving eleven participants representing an incredibly diverse cross-section of interests: HVAC distributors, contractors, and manufacturers; natural gas distributors; consumer, energy-efficiency, and environmental advocates; and DOE. In early 2014, a settlement agreement was reached in which all eleven participants agreed to a notice and comment process to clarify the circumstances under which DOE could use the DFR process to set standards. The circumstances surrounding the lawsuit and settlement, while expensive and potentially avoidable, illustrate the pressing need for clarification of DOE's DFR authority under EPCA moving forward in the interest of ensuring that the same situation does not arise again.

The pressing need for clarification is underscored by the fact that DOE's DFR authority under EPCA affects myriad industries: manufacturers of a wide range of consumer products, including furnaces, air conditioners, boilers, refrigerators, freezers, heat pumps, water heaters, pool heaters, direct heating equipment, dishwashers, clothes washers and dryers, various lamps, kitchen ranges and ovens, faucets, showerheads, urinals, microwaves, and other consumer products falling within the ambit of the statute; distributors of the foregoing consumer products, as well as contractors and installers—tens of thousands of small businesses; energy suppliers, such as natural gas distributors; and utilities. In addition, consumers are affected by energy-conservation standards that DOE establishes under EPCA, which may, among other things, substantially increase the up-front cost of products that are necessities of modem life, such as furnaces, air conditioners, and refrigerators.

These energy-conservation standards impact the day-to-day lives of millions of people. For this reason, they are often classified as ''major rules,'' which means that they have been deemed ''likely to result in . . . an annual effect on the economy of $100,000,000 or more'' or ''a major increase in costs'' or ''significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of'' American companies ''to compete with foreign-based enterprises.'' [8] In other words, the stakes are often high when DOE promulgates regulations implementing EPCA, whether via the DFR process or through normal notice and comment rulemaking. Given that EPCA requires DOE to establish energy-conservation standards at regular intervals, it is expected that DOE frequently will use the DFR process to promulgate ''major rules'' establishing energy-conservation standards for consumer products, notwithstanding adverse comments on those rules.[9]

II. History of DOE's DFR Authority Under EPCA

HARDI believes that DOE's communications to Congress requesting legislation authorizing DOE to issue and confirm DFRs setting energy-efficiency standards under EPCA outline the proper framework for regulations clarifying the scope of this authority, the circumstances in which DOE may issue a DFR, and, perhaps more importantly, the circumstances requiring withdrawal of a DFR. In this regard, in 2006, then-Secretary of Energy Samuel W. Bodman wrote to the Speaker of the U.S. House of Representatives ''to transmit legislation to authorize the Secretary of Energy to use expedited procedures to promulgate rules establishing energy conservation standards,'' which included proposed legislation granting DOE authority to set standards through the DFR process: [10]

''The proposed legislation would provide expedited procedures for rulemaking in a defined set of circumstances. It would authorize special rulemaking procedures that would allow the Secretary to prescribe energy conservation standards by direct final rule. Use of this authority would be limited to circumstances in which, in response to an advance notice of proposed rulemaking, representatives of *all relevant interests* (including manufacturers of covered products, efficiency advocates and State officials) *negotiate on their own initiative and submit a joint comment to the Department of Energy* (DOE) proposing an energy conservation standard for a product. If the Secretary determines that the jointly proposed standard meets the substantive requirements of the law for that product, the Secretary would be authorized to publish a notice of direct final rulemaking incorporating the recommended standard. The Secretary simultaneously would publish a notice of proposed rulemaking, incorporating the regulatory language of the direct final rule and providing a public comment deadline before the effective date of the direct final rule. If there is no objection to the jointly proposed standard, the direct final rule would become effective 120 days after the notice is published. *If any person files a significant adverse comment* on the notice of proposed rulemaking, the Secretary would *be required to withdraw the direct final rule* and move forward under the procedures of existing law to consider the comments and publish a standard notice of final rulemaking.

This proposed legislation would permit DOE, *in the absence of apparent stakeholder objection, to expedite a rulemaking* by going directly from an advance notice of proposed rulemaking to a notice of final rulemaking with a summary statement of basis and purpose, even though there is no emergency that would justify waiver of notice and comment rulemaking under the Administrative Procedure Act (APA), 5 U.S.C. 553. Since the rational basis test under the APA (5 U.S.C. 706) would apply to judicial review of a direct final rule in the event that an interested person filed a petition for review, *DOE would have to be cautious in determining that the stakeholder agreement represents the views of all relevant stakeholder interests.''* [11]

DOE's testimony before Congress on the scope of its requested DFR authority provides another important touchstone for regulations clarifying DOE's DFR process. For example, Assistant Secretary Alexander Karsner told Congress that DOE's DFR ''legislative proposal would allow the Department to move directly to a final rule for certain *products when a clear consensus for standards* exist among the manufacturers, efficiency advocates and *other stakeholders*.'' [12] Principal Deputy Assistant Secretary John Mizroch echoed that message to Congress:

''To shorten the time for a completed standard by nearly one-third, Secretary Bodman recently requested authorization from Congress to streamline the rulemaking process and allow the Department to go to a direct final rule for certain products when a clear consensus for a standard exists among manufacturers, efficiency advocates, the Government and other stakeholders.'' [13]

Congress accepted then-Secretary Bodman's proposal in 2007 through Section 308 of the Energy Independence and Security Act of 2007, codified at 42 U.S.C. 6295(p)(4), which reflects DOE's, and Congress's, intent to limit use of the expedited DFR process to circumstances where genuine consensus exists among all affected stakeholders. HARDI agrees with DOE that ''Congress adopted almost exactly the language DOE had . . . proposed'' in draft legislation attached to Secretary Bodman's letter to Congress.[14] In part for this reason, regulations clarifying DOE's DFR authority under EPCA should be consistent with Secretary Bodman's proposal.

In addition, regulations clarifying DOE's DFR authority should be consistent with 42 U.S.C. 6295(p)(4)'s plain language. That provision authorizes DOE to set standards through DRFs only under limited circumstances. To do so, DOE must first receive ''a statement . . . submitted jointly

[8] 15 U.S.C. 804(2).

[9] See, e.g., Notice of Effective Date and Compliance Dates for Direct Final Rule, Energy Conservation Program: Energy Conservation Standards for Dishwashers, 77 FR 59,712 (Oct. 1, 2012).

[10] Letter from Samuel J. Bodman, Secretary of Energy, to The Honorable J. Dennis Hastert, at 1 (March 23, 2006).

[11] *Id.* at 1–2 (emphasis added).

[12] Achieving—At Long Last—Appliance Efficiency Standards, Hearing Before H. Subcomm. On Energy and Air Quality, 110th Cong., 8, 16 (2007) (Alexander Karsner, Asst. Sec., DOE), *available at http://www.gpo.gov/fdsys/pkg/CHRG-l10hhrg39512/html/CHRG-l10hhrg39512.htm* (last visited July 17, 2014).

[13] Energy Efficiency Promotion Act of 2007: Hearing on S. 1115 Before S. Comm. On Energy and Nat'l Resources, 110th Cong. 4, 6 (2007) (John Mizroch, Principal Deputy Ass. Sec., DOE), *available at http://www.gpo.gov/fdsys/pkg/CHRG-l10shrg36640/html/CHRG-l10shrg36640.htm* (last visited July 17, 2014).

[14] Brief for the Respondent, *APGA v. DOE,* Case No. 11–1485, Doc. #1386024, at 13 (D.C. Cir. July 26, 2012).

by interested persons that are fairly representative of relevant points of view (including representatives of covered products, States, and efficiency advocates) . . . [that] contains recommendations with respect to an energy . . . conservation standard[.]'' [15] Then DOE must ''determine[] that the recommended standard contained in the [joint] statement'' complies with EPCA's other requirements for new or amended energy-conservation standards.[16] If DOE determines that a joint statement recommending energy-conservation standards satisfies these requirements, then it may issue a DFR setting a standard [17] and must solicit public comment for at least 110 days with respect thereto.[18] If DOE ''receives 1 or more adverse public comments . . . that the Secretary determines . . . may provide a reasonable basis for withdrawing the direct final rule under subsection (o) [of EPCA] . . . or any other applicable law,'' DOE must withdraw the DFR.[19] DOE must make this determination within 10 days or less of the close of the comment period,[20] which, as a practical matter, does not provide DOE sufficient time to evaluate the merits of adverse comments or conduct a complex cost-benefit analysis.

HARDI agrees with DOE that the statute requires the agency to consider adverse comments cumulatively.[21] HARDI also agrees with DOE [22] that the statute requires the agency to either confirm the DFR or withdraw the DFR in its entirety.[23] The statutory text also makes clear that DOE must withdraw a DFR if it receives adverse comments that could possibly provide a reasonable basis for withdrawal. Congress's deliberate decision to use ''may'' language, coupled with the 10-day-or-less withdrawal period, confirms that Congress chose to give DOE narrow authority to set uncontroversial standards through DFRs based on genuine, broad-based consensus agreements among stakeholders.

III. Recommendations for Definitions Clarifying DOE's DFR Authority

In light of the above, HARDI believes that defining key statutory language in EPCA's DFR provision, as outlined below, would have various long-term benefits for DOE, all stakeholders, and the general public:

- Reduce the potential for litigation and thereby reduce the likelihood of delayed implementation of energy-conservation standards.
- Ensure that regulated parties and others who will incur compliance- and enforcement-related and other monetary costs as a result of energy-conservation standards will have a seat at the table and a meaningful opportunity to participate in the process.
- Prevent a narrow subset of interested parties (advocating either unduly stringent or unduly lax standards) from forcing those standards on the regulated community (and/or other interested parties, including efficiency advocates) without their consent.
- Provide a framework that will allow the expedited DFR process to be used as intended in circumstances where a clear consensus exists among all relevant interests, including manufacturers, efficiency advocates, and other stakeholders (which may include distributors, contractors, energy suppliers, utilities, consumers, and other market participants, depending on the substance of the proposed DFR).
- Enable DOE to work with stakeholders to develop DFR standards that will, on the one hand, ensure that relevant stakeholders will always have a seat at the table, but, on the other hand, prevent a single individual from derailing a DFR through submission of a frivolous comment on Regulations.gov.

Accordingly, HARDI respectfully suggests the following definitions of key statutory language in EPCA's DFR provision, 42 U.S.C. 6295(p)(4):

(1) ''Interested Parties That Are Fairly Representative of Relevant Points of View''

In his or her determination, the Secretary shall consider whether the petitioners fairly represent the spectrum of opinions that have been presented to the Department as being interested in the products or efficiency standard at issue. There is no requirement that all possible commenters join in a petition, and all such persons will have an opportunity to comment on the DFR and potentially submit an ''adverse comment'' that will require withdrawal of a DFR. However, a petition must represent the views of all relevant stakeholder interests (which may include distributors, contractors, energy suppliers, utilities, consumers, and other market participants, depending on the substance of the proposed DFR).

(a) Representatives of manufacturers of covered products, States, and efficiency advocates are necessary parties to any joint statement forming the basis of a direct final rule. No presumption shall arise that a joint statement submitted solely by representatives of manufacturers of covered products, States, and efficiency advocates has been submitted by interested parties that are fairly representative of relevant points of view.

(b) A joint statement recommending that the Secretary exercise his or her optional authority under 42 U.S.C. 6295(O)(6) to set regional standards for furnaces, central air conditioners, or heat pumps cannot form the basis of a direct final rule unless representatives of the market participants listed in 42 U.S.C. 6295(O)(6)(D)(ii) are signatories to that joint statement (consumers, manufacturers, product distributors, contractors, and installers).

Rationale for Proposed Definition 1: Proposed Definition 1 is designed to clarify language in 42 U.S.C. 6295(p)(4)(A) authorizing DOE to issue a DFR if, and only if, it receives ''a statement that is submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates)[.]'' [24] Particularly against the backdrop of then-Secretary Bodman's proposal, Congress's use of the word ''including'' makes clear that the list of necessary parties to the joint statement is nonexhaustive, as the stakeholders ''that are fairly representative of relevant points of view'' will vary based on the content of the DFR. For example, EPCA itself lists additional stakeholders who necessarily have relevant points of view for DFRs setting regional energy conservation standards, as it requires DOE to ''consider the impact of the additional regional standards on consumers, manufacturers, and other market participants, including product distributors, dealers, contractors, and installers.'' [25] Elsewhere, DOE has recognized that energy suppliers may be relevant parties.[26] The same holds true with respect to utilities.[27]

Rationale for Proposed Definition (l)(a): Proposed Definition (l)(a) is designed to clarify Congress's intent that while manufacturers of covered products, States, and energy-efficiency advocates are necessary parties to any joint statement forming the basis of a DFR, those parties may not be sufficient, depending on the substance of the proposed standard.

Rationale for Proposed Definition (l)(b): Proposed Definition (l)(b) reflects Congress's intent, as expressed by the plain text of 42 U.S.C. 6295(o)(6)(d)(ii), that if DOE wishes to exercise its option of setting regional energy-conservation standards, the agency ''shall . . . consider the impact of the additional regional standards on consumers, manufacturers, and other market participants, including product distributors, dealers, contractors, and installers.'' This mandatory directive reflects Congress's recognition of the practical reality that regional energy-conservation standards are not only unprecedented in the industry but also impact a far wider array of stakeholders—including tens of thousands of small businesses (e.g., distributors, contractors) and consumers—than a national base standard. Regional standards effectively make a consumer product that would be legal in one part of the country illegal in another part of the country and impose substantial compliance-and enforcement-related costs on entire industries—from large manufacturers to independent contractors—which are fundamentally different from the costs imposed by a single national base standard. In light of the unique challenges posed by regional standards, this definition would ensure that any joint statement

[15] 42 U.S.C. 6295(p)(4)(A).

[16] 42 U.S.C. 6295(p)(4)(A)(i).

[17] *Id.*

[18] 42 U.S.C. 6295(p)(4)(B).

[19] 42 U.S.C. 6295(p)(4)(C)(i) (emphasis added).

[20] *Compare* 42 U.S.C. 6295(p)(4)(B) (requiring comment period of ''at least 110 days''), *with* 42 U.S.C. 6295(p)(4)(C)(i) (DOE must determine whether to withdraw DFR ''[n]ot later than 120 days'' after publication).

[21] Notice of Effective Date and Compliance Dates for Direct Final Rule, Energy Conservation Program: Energy Conservation Standards for Residential Furnaces and Residential Central Air Conditioners and Heat Pumps, 76 FR 67,037, 67,050 (Oct. 31, 2011).

[22] *See id.* at 67,037.

[23] 42 U.S.C. 6295(p)(4)(C)(i).

[24] 42 U.S.C. 6295(p)(4)(A) (emphasis added).

[25] 42 U.S.C. 6295(o)(6)(D)(ii).

[26] Notice of Effective Date and Compliance Dates for Direct Final Rule, Energy Conservation Program: Energy Conservation Standards for Residential Furnaces and Residential Central Air Conditioners and Heat Pumps, 76 FR 67,037, 67,050 (Oct. 31, 2011).

[27] 10 CFR pt. 430, Appendix A, Subpart C, § 8(b).

recommending that DOE set EPCA-optional regional standards reflects the views of relevant stakeholders who bear the brunt of the enforcement- and compliance-related costs associated with those standards.

(2) ''Adverse Public Comments'' That ''May Provide a Reasonable Basis for Withdrawing the Direct Final Rule''

Any one or more comments, considered as a whole, that provide a plausible basis for disputing material facts, analyses, or conclusions in the petition or DFR, even if not accepted by the Department as valid or dispositive, but which, if accepted, could possibly affect the proposed standard in stringency or structure, will require the Secretary to withdraw the DFR. In general, adverse comments should address technical, economic, energy, and legal arguments that are contained in the petition and in the DFR. In general, overly broad and general statements opposing regulations or questioning the motivation of petitioners will not be considered sufficient. The Secretary shall not make conclusive determinations on the merits of public comments. Comments will be considered cumulatively.

Rationale for Proposed Definition 2: Proposed Definition 2 attempts to strike the appropriate balance between establishing a standard for withdrawal that is so high that issuance of a DFR virtually ensures its confirmation, regardless of how controversial it may be and irrespective of the merits of substantive objections to it, and a standard so low that any individual can derail a DFR—and ruin productive negotiations—simply by submitting a frivolous comment on the Internet. We believe that this proposed definition reflects Congress's intent that DOE should not make conclusive determinations on the merits of public comments, which must be considered cumulatively, or engage in extrastatutory cost-benefit analysis based on those comments. We also believe that this proposed definition will prove beneficial by placing the emphasis on practical and legal arguments, as opposed to ideologically driven opposition that is more appropriately addressed through the political process. As a practical matter, this will ensure that DFRs that are the product of broad agreement among relevant stakeholders are confirmed, while those that prove to be controversial among those who will actually bear their costs are withdrawn.

(3) ''The Recommended Standard Contained in the Statement''

Any DFR issued pursuant to 42 U.S.C. 6295(p)(4)(A)(i) shall contain only the recommended standard contained in the joint statement authorizing the Secretary to issue the DFR. The Secretary shall not include in any DFR issued pursuant to 42 U.S.C. 6295(p)(4)(A)(i) any energy-conservation standards, including but not limited to standby and off-mode energy-conservation standards, that are not specifically recommended in the joint statement that authorizes issuance of that DFR.

Rationale for Proposed Definition 3: Proposed Definition 3 is intended to ensure that the broad array of stakeholders that negotiate and then submit consensus-based energy-conservation standards via a petition for a DFR get what they bargained for—no more, and no less. In the past, DOE has issued and confirmed DFRs containing energy-conservation standards (e.g., standby and off-mode standards for air conditioners) that are outside of the scope of standards proposed in a joint comment used as the basis for the DFR. Setting standards through the DFR process that are not recommended in the joint statement will needlessly disturb the settled expectations of the parties that submit it. This may have a chilling effect on the legitimate use of the DFR mechanism to set noncontroversial consensus standards. Proposed Definition 3 provides certainty to stakeholders that when they submit a joint statement asking DOE to issue a DFR setting particular standards, DOE will either issue a DFR establishing those, and only those, standards, or publish a notice of a determination explaining why a DFR cannot be issued based on the statement, as required by EPCA.

HARDI appreciates the opportunity to contribute to this process. We hope that our comments and proposed DFR definitions are viewed as constructive and open the conversation about meaningful DFR reform on a positive note. We look forward to working with DOE to craft regulations that promote the public interest, codify and clarify Congress's intent, and provide meaningful long-term benefits to all stakeholders, as well as DOE.

Respectfully submitted,

Jonathan A. Melchi,

Director of Government Affairs, HARDI

B. AHRI Letter (October 10, 2014)

October 10, 2014.

Mr. Daniel Cohen, Assistant General Counsel for Legislation, Regulation and Energy Efficiency, Office of General Counsel, U.S. Department of Energy, 1000 Independence Avenue SW., Room 6A179 Washington, DC 20585.

Re: U.S. Department of Energy (DOE) Request for Information Regarding Direct Final Rule (DFR) Process Pursuant to 42 U.S.C. 6295 (p)(4)

Dear Mr. Cohen: These comments are submitted by the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) [28] in accordance with the settlement of the *American Public Gas Association (APGA) v. DOE* litigation [29] on April 24, 2014. The purpose of this letter is to provide DOE with information on the following issues, as set forth in the settlement agreement:

1. When a joint statement with recommendations related to an energy or water conservation standard would be deemed to have been submitted by ''interested persons that are fairly representative of relevant points of view,'' thereby permitting use of the DFR mechanism;

2. The nature and extent of ''adverse comments'' that may provide the Secretary a reasonable basis for withdrawing the direct final rule, leading to further rulemaking under the accompanying notice of proposed rulemaking (NOPR);

3. What constitutes the ''recommended standard contained in the statement,'' and the scope of any resulting direct final rule; and

4. Any other issues pertaining to the DFR process.

In general,[30] AHRI concurs with the definitions of key terms proposed by the Heating, Air-Conditioning and Refrigeration Distributors International (HARDI). Of particular concern to AHRI is issue number three (3), regarding the scope of the DFR. The DFR establishing energy efficiency standards for residential central air conditioning and furnaces [31] included non-consensus ''off-mode'' standards for residential air conditioners and heat pumps. AHRI has repeatedly objected to the inclusion of these standards, both because they were not part of the negotiated consensus agreement, and because they were promulgated without the statutorily required test procedure. Although the non-negotiated off-mode standards included in the DFR (which was first published over three years ago) will be effective January 1, 2015, DOE has yet to publish a final test procedure for those standards.

The non-consensus off-mode standards DOE included in the DFR are contrary to the statutory requirements and overall framework of the Energy Policy and Conservation Act (EPCA), which requires promulgated test procedures to be included in new or amended efficiency standards.[32] Under that framework, test procedures are included with the applicable standard, which is effective five years after the publication date.[33] This provides manufacturers with the necessary time to test products to ensure compliance with new or amended efficiency levels and make the appropriate certifications to DOE. Any lesser time frame for implementation results in test procedures that are unduly burdensome to conduct, as manufacturers will not have sufficient time to test products for certification and compliance purposes. As AHRI has repeatedly noted, it is arbitrary and capricious to set standards, or even to evaluate standards levels, until a test procedure has been established to determine

[28] The Air-Conditioning, Heating, and Refrigeration Institute (AHRI) is the trade association representing manufacturers of air conditioning, heating, commercial refrigeration, and water heating equipment. An internationally recognized advocate for the industry, AHRI develops standards for and certifies the performance of many of these products. AHRI's 300+ member companies manufacture quality, efficient, and innovative residential and commercial air conditioning, space heating, water heating, and commercial refrigeration equipment and components for sale in North America and around the world.

[29] *American Public Gas Association (APGA) v. DOE,* No. 11–1485 (D.C. Cir.)

[30] Given the preemption provisions in EPCA, AHRI does not believe that States are required parties for all DFR statements, but that ''interested persons'' should be determined by the subject matter of the energy conservation standard at issue.

[31] 76 FR 37,408 (June 27, 2011)

[32] 42 U.S.C. 6295(r)

[33] *See, e.g.,* the process rule at 7(d).

actual performance and what is economically and technically feasible. Inclusion of the non- consensus off-mode standards in the DFR was thus entirely inappropriate.

The inclusion of the off-mode standards in the DFR despite the lack of a final test procedure, in violation of EPCA's statutory requirements, illustrates the importance of clarifying that any DFR issued pursuant to 42 U.S.C. 6295(p)(4)(A)(i) should contain only the recommended consensus standard contained in the joint statement authorizing the Secretary to issue the DFR. As HARDI notes in its proposed definition, the Secretary should be prohibited from including any energy conservation standards, including but not limited to standby and off-mode energy conservation standards that are not specifically recommended in the joint statement that authorizes the issuance of the DFR.

In the settlement agreement, DOE agreed to initiate a notice and comment rulemaking to clarify its process related to the promulgation of DFRs. The purpose of this rulemaking is to consider amending the DOE ''process rule'' promulgated July 15, 1996, titled ''Procedures, Interpretations and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products,'' and codified at Appendix A to Subpart C of Part 430, Title 10, Code of Federal Regulations.[34] AHRI believes that the process by which DOE will issue DFRs clearly pertains to, and in fact is inextricably linked with, its overall rulemaking process as set forth in the process rule, and that DOE must consider and solicit comment on other amendments to the process rule in connection with this notice and comment rulemaking. For example, the process rule addresses consideration of ''Joint Stakeholder Recommendations'' and states that DOE will identify any necessary modifications to established test procedures when initiating the standards development process, and that modifications will be proposed early in the standards development process. It also states that ''Final, modified test procedures will be issued prior to the NOPR on proposed standards.'' As noted above, this did not happen regarding the non-negotiated off-mode standards DOE included in the DFR for central air conditioners and heat pumps. There are also several other recent examples of DOE's publication of energy conservation standards when the related test procedures were final only after issuance of the related NOPR or final rule.[35]

It has been nearly 20 years since the process rule was promulgated, and the quantity of DOE rulemaking and complexity of DOE's analysis has changed significantly. The inclusion of guidance on the DFR process will be a substantial change to the process rule, one that should be considered as part and parcel of DOE's overall rulemaking. Both for that reason, and to ensure that the DFR process that DOE sets forth through the current proceedings are consistent with DOE's overall guidance on new or revised energy conservation standards for consumer products, DOE should solicit and consider comments on the DFR process and amendments and improvements to the process rule as a whole.

AHRI appreciates the opportunity to provide these comments. If you have any questions regarding this submission, please do not hesitate to contact me.

Sincerely,

Amy Shepherd,

General Counsel.

C. ACCA Letter (October 10, 2014)

October 10, 2014

Mr. Daniel Cohen, Assistant General Counsel for Legislation, Regulation, & Energy Efficiency, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585.

RE: Intervener Letter in response to the Plan for Clarification of DOE Direct Final Rule Process

Dear Assistant General Counsel Cohen: ACCA submits this letter for inclusion in the notice of proposed rulemaking materials referenced in the Plan for Clarification of DOE Direct Final Rule Process (Plan for Clarification) appended to the Joint Motion of All Parties and lnterveners to Vacate in Part and Remand for Further Rulemaking filed as part of the *APGA v. US Department of Energy* litigation.

The Plan for Clarification indicates that DOE will invite public comment on issues related to the Direct Final Rule Process through a request for information (RFI), specifically:

(1) When a joint statement with recommendations related to an energy or water conservation standard would be deemed to have been submitted by ''interested persons that are fairly representative of relevant points of view,'' thereby permitting use of the DFR mechanism;

(2) The nature and extent of ''adverse comments'' that may provide the Secretary a reasonable basis for withdrawing the direct final rule, leading to further rulemaking under the accompanying notice of proposed rulemaking (NOPR);

(3) What constitutes the ''recommended standard contained in the statement,'' and the scope of any resulting direct final rule; and

(4) Any other issues pertaining to the DFR process.

The Plan for Clarification also states that DOE will ''undertake a further notice and comment process to consider amending the final rule promulgated on July 15, 1996, entitled 'Procedures, Interpretations and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products,' codified at Appendix A to Subpart C of Part 430, Title 10, Code of Federal Regulations.''

''Interested Persons That Are Fairly Representative of Relevant Points of View''

ACCA believes the meaning of the phrase ''interested persons that are fairly representative of relevant points of view'' with regard to the constituents or stakeholders to a joint statement filed for consideration under the DFR process is determined by the scope of the standard or rule. There are many analyses undertaken by DOE during the rulemaking process that look to various stakeholders for comment in developing the Technical Support Document (TSD), including the analysis of energy use, markup, life cycle costs, and payback period. If the purpose of the use of a DFR is to expedite a rulemaking process, stakeholders who would typically be interested in the results found in the TSO should be assumed to be ''interested persons.''

In addition, as part of any guidance, DOE should encourage any parties looking to develop a joint statement to consider all potential stakeholders listed in previous rulemakings on the same subject.

''Adverse Comments''

ACCA believes that more clearly defining ''adverse comments'' and the phrase ''reasonable basis ''are critical in improving the DFR development process and reducing the chances of a DFR being rejected for consideration or withdrawn by the Secretary. The factors in determining the nature of the adverse comments should be informed by the stakeholders filing those comments and the substantiation of the comments. ACCA agrees with the definition submitted by the Heating, Air-Conditioning, & Refrigeration Distributors International because it strikes the proper balance that ensures legitimate concerns will be reviewed and acknowledged.

''Recommended Standard Contained in the Statement and the Scope of Any Resulting Direct Final Rule''

ACCA believes this issue is relatively simple. DOE must consider the joint submission as a single proposal that cannot be cherry-picked. Should the joint submission include provisions that are outside the purview or jurisdiction of EPCA, or include elements that DOE prefers not to accept, then DOE must reject the joint submission with a public notice of it reasons.

Clarification of the DFR process and a follow up review of the Process Rule are necessary steps to improving the rulemaking process going forward. ACCA appreciates the opportunity to participate in the initiation of these efforts. Should you have further questions, please do not hesitate to contact me.

Respectfully,

Charlie McCrudden

Senior Vice President, Government Relations.

[FR Doc. 2014–25922 Filed 10–30–14; 8:45 am]

BILLING CODE 6450–01–P

[34] Joint Motion of all Parties and Intervenors to Vacate in Part and Remand for Further Rulemaking, *American Public Gas Association (APGA) v. DOE,* No. 11–1485 (D.C. Cir.) at 12.

[35] See, e.g., Energy Conservation Standards for Commercial Refrigeration Equipment, 79 FR 17,726 (Mar. 28, 2014); Energy Conservation Standards for Walk-In Coolers and Freezers, 79 FR 32,050 (June 3, 2014); and Energy Conservation Standards for Residential Furnace Fans, 79 FR 38,130 (July 3, 2014).

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2012–BT–STD–0045]

RIN 1904–AC87

Energy Efficiency Program for Consumer Products: Energy Conservation Standards for Ceiling Fan Light Kits

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

ACTION: Notice of public meeting and availability of preliminary technical support document.

SUMMARY: The U.S. Department of Energy (DOE) will hold a public meeting to discuss and receive comments on the preliminary analyses it has conducted for purposes of establishing energy conservation standards for ceiling fan light kits. The meeting will cover the analytical framework, models, and tools that DOE is using to evaluate potential standards for this product; the results of preliminary analyses performed by DOE for this product; the potential energy conservation standard levels derived from these analyses that DOE could consider for this product; and any other issues relevant to the development of energy conservation standards for ceiling fan light kits. In addition, DOE encourages written comments on these subjects. To inform interested parties and to facilitate this process, DOE has prepared an agenda, a preliminary technical support document (TSD), and briefing materials, which are available on the DOE Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/66.*

DATES: DOE will hold a two-day public meeting on November 18–19, 2014, from 9 a.m. to 4 p.m., in Washington, DC. Additionally, DOE plans to allow for participation in the public meeting via webinar. DOE will accept comments, data, and other information regarding this rulemaking before or after the public meeting, but no later than December 30, 2014. DOE must receive requests to speak at the meeting before 5 p.m. on November 4, 2014. DOE must receive a signed original and an electronic copy of statements to be given at the public meeting before 5 p.m. on November 4, 2014. See section IV, ''Public Participation,'' of this notice of public meeting (NOPM) for details.

ADDRESSES: The public meeting on November 18, 2014 will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585–0121. The public meeting on November 19, 2014 will be held at the U.S. Department of Energy, Forrestal Building, Room 6E–069, 1000 Independence Avenue SW., Washington, DC 20585–0121.

Interested persons may submit comments, identified by docket number EERE–2012–BT–STD–0045 and/or Regulation Identification Number (RIN) 1904–AC87, by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: CeilingFanLightKits2012STD0045@ee.doe.gov.* Include the docket number EERE–2012–BT–STD–0045 and/or RIN 1904–AC87 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies. [Please note that comments and CDs sent by mail are often delayed and may be damaged by mail screening processes.]
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone (202) 586–2945. If possible, please submit all items on CD, in which case it is not necessary to include printed copies.

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

The rulemaking Web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/66.* This Web page contains a link to the docket for this notice on the regulation.gov site. The *www.regulations.gov* Web page contains instructions on how to access all documents in the docket, including public comments.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section IV, ''Public Participation,'' of this document. For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

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

In the Office of the General Counsel, contact Ms. Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202)–287–6111. Email: *Jennifer.Tiedeman@hq.doe.gov.*

For information on how to submit or review public comments and on how to participate in the public meeting, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone (202) 586–2945. Email: *Brenda.Edwards@ee.doe.gov.*

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I. Statutory Authority

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975, as amended, (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, which includes the ceiling fan light kits (CFLKs) that are the subject of this

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

rulemaking.[2] (42 U.S.C. 6295(ff)) This program authorizes DOE to establish technologically feasible, economically justified energy efficiency regulations for certain products that would be likely to result in substantial national energy savings. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

DOE is required to consider energy conservation standards for ceiling fan light kits that: (1) Achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified; and (2) result in significant conservation of energy. (42 U.S.C. 6295(o)(2)(A) and (o)(3)(B)) To determine whether a proposed standard is economically justified, DOE will, after receiving comments on the proposed standard, determine whether the benefits of the standard exceed its burdens to the greatest extent practicable, using the following seven factors:

1. The economic impact of the standard on manufacturers and consumers of products subject to the standard;

2. The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products which are likely to result from the standard;

3. The total projected amount of energy savings likely to result directly from the standard;

4. Any lessening of the utility or the performance of the covered products likely to result from the standard;

5. The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

6. The need for national energy conservation; and

7. Other factors the Secretary of Energy considers relevant. (42 U.S.C. 6295(o)(2)(B)(i))

DOE also adheres to additional statutory requirements of general applicability for prescribing new or amended standards set forth in other relevant sections of EPCA.

II. History of Rulemaking for Ceiling Fan Light Kits

A. Background

The Energy Policy Act of 2005 (EPACT 2005), Public Law 109–58, amended EPCA and established energy conservation standards for ceiling fan light kits, as well as requirements for determining whether these standards should be amended. (42 U.S.C. 6295(ff)) Specifically, EPACT 2005 set energy conservation standards for ceiling fan light kits with medium screw base sockets, as well as pin-based sockets. (42 U.S.C. 6295(ff)(2)–(3)) The statute also directed DOE to consider and issue requirements for other types of ceiling fan light kits (including candelabra screw base sockets) by January 1, 2007, and if DOE failed to issue such standards by the specified date, the statute provided for an alternative set of requirements for ceiling fan light kits manufactured after January 1, 2010. (42 U.S.C. 6295(ff)) After January 1, 2010, DOE may again consider amended energy efficiency standards for ceiling fan light kits, standards that would apply to products manufactured not earlier than two years after the date of publication of the final rule establishing the amended standard. (42 U.S.C. 6295(ff)(5))

EPCA defines a ''ceiling fan'' as ''a nonportable device that is suspended from a ceiling for circulating air via the rotation of fan blades'' (42 U.S.C. 6291(49)) and defines a ''ceiling fan light kit'' as ''equipment designed to provide light from a ceiling fan'' that can be (1) integral, such that the equipment is attached to the ceiling fan prior to the time of retail sale; or (2) attachable, such that at the time of retail sale the equipment is not physically attached to the ceiling fan, but may be included inside the ceiling fan at the time of sale or sold separately for subsequent attachment to the fan. (42 U.S.C. 6291(50))

Under this statutory structure, DOE promulgated design standards for ceiling fans, performance standards for ceiling fan light kits and test procedures for both ceiling fans and ceiling fan light kits. In a final rule technical amendment published in the **Federal Register** on October 18, 2005, DOE codified the statutory design standards for ceiling fans and the performance standards for ceiling fan light kits in the CFR at 10 CFR 430.32(s). 70 FR 60407, 60413. Because DOE did not issue a final rule on standards for CFLKs by January 1, 2007, DOE published a final rule technical amendment in the **Federal Register** on January 11, 2007, codifying statutory standards for light kits with sockets other than medium-screw base or pin-based fluorescent lamps in the CFR. 72 FR 1270. In a final rule published in the **Federal Register** on December 8, 2006, DOE adopted test procedures for ceiling fan light kits at 10 CFR part 430, subpart B, appendix U and appendix V, respectively. 71 FR 71340, 71366–71367. Another technical amendment issued on March 3, 2009, (74 FR 12058), codified a provision that CFLKs with sockets for pin-based fluorescent lamps must be packaged with lamps to fill all sockets. (42 U.S.C. 6295(ff)(4)(C)(ii))

DOE is initiating this rulemaking pursuant to 42 U.S.C. 6295(ff)(5)–(6), which allows DOE to consider establishing or amending energy conservation standards for ceiling fan light kits, and 42 U.S.C. 6295(r), which requires DOE to prescribe test procedures for new or amended energy conservation standards. In addition to considering the energy consumption of these products in active mode, 42 U.S.C. 6295(gg) requires DOE to consider the standby mode and off mode energy consumption of ceiling fan light kits in amending both its test procedures and energy conservation standards.

B. Current Rulemaking Process

In initiating this rulemaking, DOE has prepared a Framework Document, ''Energy Conservation Standards Rulemaking Framework Document for Ceiling Fans and Ceiling Fan Light Kits,'' which describes the procedural and analytical approaches DOE anticipates using to evaluate energy conservation standards for ceiling fan light kits. This document is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/66.*

DOE held a public meeting on March 22, 2013, at which it described the various analyses DOE would conduct as part of the rulemaking, such as the engineering analysis, the life-cycle cost (LCC) and payback period (PBP) analyses, and the national impact analysis (NIA). Representatives for manufacturers, trade associations, environmental and energy efficiency advocates, and other interested parties attended the meeting.

Comments received since publication of the Framework Document have helped DOE identify and resolve issues related to the preliminary analyses. Chapter 2 of the preliminary TSD summarizes and addresses the comments received.

III. Summary of the Analyses Performed by DOE

For the CFLKs covered in this rulemaking, DOE conducted in-depth technical analyses in the following areas: (1) Engineering; (2) markups to determine product price; (3) energy use; (4) life-cycle cost and payback period; and (5) national impacts. The preliminary TSD that presents the methodology and results of each of

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

these analyses is available at *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/66.*

The tools used in preparing several of the above analyses (life-cycle cost and national impacts) are available at the above Web site. Each individual spreadsheet includes an introduction describing the various inputs and outputs of the analysis, as well as operation instructions.

DOE also conducted, and has included in the preliminary TSD, several other analyses that support the major analyses or are preliminary analyses that will be expanded upon for a notice of proposed rulemaking (NOPR) if DOE determines that amended energy conservation standards are technologically feasible, economically justified, and would save a significant amount of energy, based on the information presented to the Department. These analyses include: (1) The market and technology assessment; (2) the screening analysis, which contributes to the engineering analysis; and (3) the shipments analysis, which contributes to the LCC and PBP analysis and NIA. In addition to these analyses, DOE has begun preliminary work on the manufacturer impact analysis and has identified the methods to be used for the consumer subgroup analysis, the emissions analysis, the employment impact analysis, the regulatory impact analysis, and the utility impact analysis. DOE will expand on these analyses in the notice of proposed rulemaking (NOPR).

A. Engineering Analysis

The engineering analysis establishes the relationship between the cost and efficiency levels of the product that DOE is evaluating as potential energy conservation standards. This relationship serves as the basis for cost-benefit calculations for individual consumers, manufacturers, and the Nation. The engineering analysis identifies representative baseline products, which is the starting point for analyzing technologies that provide energy efficiency improvements. ''Baseline products'' refers to a model or models having features and technologies typically found in minimally-efficient products currently available on the market and, for products already subject to energy conservation standards, a model that just meets the current standard. After identifying the baseline models, DOE estimated manufacturer selling prices by using a consistent methodology and pricing scheme that includes material costs and manufacturer markups. Chapter 5 of the preliminary TSD discusses the engineering analysis.

B. Energy Use Analysis

The energy use analysis provides estimates of the annual energy consumption of ceiling fan light kits. The energy use analysis seeks to estimate the range of energy consumption of the products that meet each of the efficiency levels considered in a given rulemaking as they are used in the field. DOE uses these values in the LCC and PBP analyses and in the NIA. Chapter 7 of the preliminary TSD addresses the energy use analysis.

C. Life-Cycle Cost and Payback Period Analyses

The LCC and PBP analyses determine the economic impact of potential standards on individual consumers. The LCC is the total cost of purchasing, installing and operating a considered product over the course of its lifetime. The LCC analysis compares the LCCs of products designed to meet possible energy conservation standards with the LCC of the product likely to be installed in the absence of standards. DOE determines LCCs by considering: (1) Total installed cost to the purchaser (which consists of manufacturer selling price, distribution chain markups, sales taxes, and installation cost); (2) the operating cost of the product (energy cost, water and wastewater cost in some cases, and maintenance and repair cost); (3) product lifetime; and (4) a discount rate that reflects the real consumer cost of capital and puts the LCC in present-value terms. The PBP represents the number of years needed to recover the increase in purchase price (including installation cost) of higher-efficiency products through savings in the operating cost of the product. PBP is calculated by dividing the incremental increase in installed cost of the higher efficiency product, compared to the baseline product, by the annual savings in operating costs. Chapter 8 of the preliminary TSD addresses the LCC and PBP analyses.

D. National Impact Analysis

The NIA estimates the national energy savings (NES) and the net present value (NPV) of total consumer costs and savings expected to result from amended standards at specific efficiency levels (referred to as candidate standard levels). DOE calculated NES and NPV for each candidate standard level for ceiling fan light kits as the difference between a base-case forecast (without amended standards) and the standards-case forecast (with amended standards). Cumulative energy savings are the sum of the annual NES determined for the lifetime of the products shipped from 2019 to 2048.[3] The NPV is the sum over time of the discounted net savings each year, which consists of the difference between total operating cost savings and increases in total installed costs. Critical inputs to this analysis include shipments projections, estimated product lifetimes, product installed costs and operating costs, product annual energy consumption, the base case efficiency projection, and discount rates. Chapter 10 of the preliminary TSD addresses the NIA.

IV. Public Participation

DOE invites input from the public on all of the topics described above. The preliminary analytical results are subject to revision following further review and input from the public. A complete and revised TSD will be made available upon issuance of a NOPR. The final rule establishing any amended energy conservation standards will contain the final analytical results and will be accompanied by a final rule TSD.

DOE encourages those who wish to participate in the public meeting to obtain the preliminary TSD from DOE's Web site and to be prepared to discuss its contents. Once again, a copy of the preliminary TSD is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/66.* However, public meeting participants need not limit their comments to the topics identified in the preliminary TSD; DOE is also interested in receiving views concerning other relevant issues that participants believe would affect energy conservation standards for this product or that DOE should address in the NOPR.

Furthermore, DOE welcomes all interested parties, regardless of whether they participate in the public meeting, to submit in writing by December 30, 2014 comments, data, and information on matters addressed in the preliminary TSD and on other matters relevant to consideration of energy conservation standards for ceiling fan light kits.

The public meeting will be conducted in an informal conference style. A court reporter will be present to record the minutes of the meeting. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by United States antitrust laws.

[3] For purposes of analysis, DOE assumes that 2019 would be the first year of compliance with amended standards.

After the public meeting and the closing of the comment period, DOE will consider all timely-submitted comments and additional information obtained from interested parties, as well as information obtained through further analyses. Afterwards, the Department will publish either a determination that the standards for ceiling fan light kits need not be amended or a NOPR proposing to amend those standards. The NOPR will include proposed energy conservation standards for the products covered by the rulemaking, and members of the public will be given an opportunity to submit written and oral comments on the proposed standards.

Please also visit DOE's ceiling fan light kits Web page at *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/66.* for information about existing standards and test procedures, and the history and impacts of previous DOE regulatory actions, for this category of products.

A. Attendance at Public Meeting

The time and date of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this notice. The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585–0121. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945. DOE requires visitors to have laptops and other devices, such as tablets, checked upon entry into the building. Please report to the visitor's desk to have devices checked before proceeding through security.

Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email: *Regina.Washington@ee.doe.gov* so that the necessary procedures can be completed.

You can attend the public meeting via webinar, and registration information, participant instructions, and information about the capabilities available to webinar participants will be published on the following Web site: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/66.* Participants are responsible for ensuring their computer systems are compatible with the webinar software.

The purpose of the meeting is to receive comments and to help DOE understand potential issues associated with this rulemaking. DOE must receive requests to speak at the meeting before 5 p.m. on November 4, 2014. DOE must receive a signed original and an electronic copy of statements to be given at the public meeting before 5 p.m. on November 4, 2014.

B. Procedure for Submitting Requests to Speak

Any person who has an interest in this rulemaking or who is a representative of a group or class of persons that has an interest in these issues may request an opportunity to make an oral presentation. Such persons may hand-deliver requests to speak, along with a computer diskette or CD in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format to Ms. Brenda Edwards at the address shown in the **ADDRESSES** section at the beginning of this notice between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays. Requests may also be sent by mail to the address shown in the **ADDRESSES** section or email to *Brenda.Edwards@ee.doe.gov.*

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE requests persons selected to be heard to submit an advance copy of their statements at least two weeks before the public meeting. At its discretion, DOE may permit any person who cannot supply an advance copy of their statement to participate, if that person has made advance alternative arrangements with the Building Technologies Program. The request to give an oral presentation should ask for such alternative arrangements.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also employ a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA. (42 U.S.C. 6306) A court reporter will record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal conference style. DOE will present summaries of comments received before the public meeting, allow time for presentations by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a prepared general statement (within DOE-determined time limits) prior to the discussion of specific topics. DOE will permit other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions from DOE and other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be posted on the DOE Web site and will also be included in the docket, which can be viewed as described in the Docket section at the beginning of this notice. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and other information regarding this rulemaking before or after the public meeting, but no later than the date provided at the beginning of this document. Please submit comments, data, and other information as provided in the **ADDRESSES** section. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format and avoid the use of special characters or any form of encryption. Comments in electronic format should be identified by the Docket Number EERE–2011–BT–STD–0045 and/or RIN 1904–AC87 and, wherever possible, carry the electronic signature of the author. No telefacsimiles (faxes) will be accepted.

Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document including all the information believed to be confidential and one copy of the document with the

information believed to be confidential deleted. DOE will make its own determination as to the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) a date upon which such information might lose its confidential nature due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this NOPM.

Issued in Washington, DC, on October 27, 2014.

Kathleen B. Hogan,

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

[FR Doc. 2014–25933 Filed 10–30–14; 8:45 am]

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DEPARTMENT OF EDUCATION

34 CFR Chapter II

[ED–2014–OESE–0134; CFDA Number: 84.415A]

Proposed Priorities, Requirements, Definitions, and Selection Criteria—State Tribal Education Partnership Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Proposed priorities, requirements, definitions, and selection criteria.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education proposes priorities, requirements, definitions, and selection criteria for the State Tribal Education Partnership (STEP) program. The Assistant Secretary may use one or more of these priorities, requirements, definitions, and selection criteria for competitions in fiscal year (FY) 2015 and later years. We propose this action to enable tribal educational agencies (TEAs) to administer formula grant programs under the Elementary and Secondary Education Act of 1965 (ESEA), and to improve the partnership between TEAs and the State educational agencies (SEAs) and local educational agencies (LEAs) that educate students from the affected tribe.

DATES: We must receive your comments on or before December 1, 2014.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Are you new to the site?''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed regulations, address them to the person listed under **FOR FURTHER INFORMATION CONTACT**.

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: Shahla Ortega, U.S. Department of Education, 400 Maryland Avenue SW., room 3E211, Washington, DC 20202–6450. Telephone: (202) 453–5602 or by email: *shahla.ortega@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation To Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priorities, requirements, definitions, and selection criteria, we urge you to identify clearly the specific proposed priority, requirement, definition, or selection criterion that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed priorities, requirements, definitions, and selection criteria. 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 program.

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 3E211, 400 Maryland Avenue SW., Washington, DC, between the hours of 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 this notice. 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**.

Purposes of Program: The purposes of this program are to: (1) Promote increased collaboration between TEAs and the SEAs and LEAs that serve students from the relevant tribes, in the administration of certain ESEA formula grant programs; and (2) build the capacity of TEAs to conduct certain administrative functions under those programs for eligible schools, as determined by the TEA, SEA, and LEA.

Program Authority: 20 U.S.C. 7451(a)(4).

Background

The FY 2012 appropriation for the Department of Education (the Department) included funding for a pilot program under the Indian Education (ESEA title VII) National Activities authority. Under the pilot, the Department awarded competitive grants to four TEAs to increase collaboration between TEAs and SEAs in the administration of certain ESEA State-administered formula grant programs, build TEA capacity to conduct State administrative functions under those programs for eligible schools located on reservations, increase the role of TEAs in the education of their children, and improve the academic achievement of

American Indian and Alaska Native students (see 77 FR 31592, May 29, 2012).

TEAs from a tribe with a reservation on which there was at least one public school were eligible to apply for the STEP pilot. Applicants were required to submit a preliminary agreement between the TEA and SEA that included a list of eligible participating schools and letters of support from participating LEAs, as well as a description of the programs, functions, and capacity-building activities to be included in the project. We then required grantees to submit a final agreement providing additional detailed information within nine months after the start of the first grant period. The four grantees all submitted the final agreement and received continuation awards for the second year and will receive continuation awards for the final year of their grant awards.

For the STEP pilot competition, the Department waived notice-and-comment rulemaking because the competition was conducted under new program authority. Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities, requirements, definitions, and selection criteria. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, allows the Secretary of Education to exempt from rulemaking requirements, regulations governing the first grant competition under a new program authority, and the STEP pilot competition qualified for this exemption. For the STEP pilot competition, we used the selection criteria in the Education Department General Administrative Regulations (34 CFR 75.210).

Tribal Consultation: On January 29 and February 5, 2014, the Department solicited tribal input on the STEP program before starting the rulemaking process, pursuant to Executive Order 13175 (''Consultation and Coordination With Indian Tribal Governments''). Tribal members participated in person and by virtual media. A total of 89 tribal members participated, of whom 17 were tribal leaders.

We sought input concerning the type and scope of functions that TEAs should assume under the grant program. Some participants favored continuing the STEP program's focus on SEA-type activities while others supported a focus on LEA-type activities. Participants were generally interested in TEAs building capacity to provide a broader range of educational services for students than had initially been designed and implemented in the STEP pilot.

Proposed Priorities: This notice contains two proposed priorities.

Background

We would like to minimize any competitive disadvantage that newly created TEAs and TEAs with relatively little experience operating education programs may have compared to FY 2012 STEP grantees or established TEAs that have existing relationships with their LEAs or SEAs.

In order to create more opportunities for newly established TEAs, we propose to establish separate priorities for established TEAs and TEAs with limited prior experience, to enable us to award grants to TEAs in each of these two categories. Because the purpose of the STEP grants is to build TEA capacity, we want to have the option of ensuring that grants do not go solely to TEAs with the most capacity and experience, and that less experienced TEAs are able to be competitive. On the other hand, we will ensure that when grants go to less experienced TEAs, that those grantees have the ability to carry out the grant, by using selection criteria designed to reward applicants with the requisite grant-management capacity and high-quality plan. We plan to make grants of four or five years' duration. We learned from the pilot grants that three years is not sufficient for full implementation of the grantees' plans. For any competition, we will announce the length of the grant period through a notice inviting applications published in the **Federal Register**.

Proposed Priority 1—Established TEAs

To meet this priority, a TEA must be an established TEA.

Proposed Priority 2—TEAs With Limited Prior Experience

To meet this priority, a TEA with limited prior experience is, for any STEP competition, a TEA that has not received a previous STEP grant, and does not meet the definition of an ''established TEA.''

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Proposed Requirements

Background

In administering the STEP pilot, we learned valuable lessons that inform our proposed changes to the STEP program.

Tribally Controlled Schools. During webinars with potential applicants and discussions with successful grantees, we learned that TEAs want the flexibility to include in their projects both public schools on their reservations and tribally controlled schools funded by the Bureau of Indian Education (BIE) of the U.S. Department of the Interior. Although we propose to provide that flexibility (see the discussion of the definition of ''eligible school'' under Proposed Definitions), we also propose, under *Schools and Programs Included in Project,* that projects must include at least one public school, in order to meet the original STEP program goal—enabling TEAs to gain experience in administering education programs in the public schools on their reservations. Applicants would be required to list the participating schools in the preliminary agreements that would be submitted with their applications. Some TEAs may currently play an important role in overseeing tribally controlled schools, which are tribal grant or contract schools funded by BIE. Therefore, we would also require the preliminary agreements to include an explanation of how the STEP funds will be used to supplement activities currently conducted by the tribe.

For projects that would include one or more tribally controlled schools, we are proposing, under *Schools and Programs Included in Project,* that applicants be required to submit a copy of the application to BIE. This will allow the Department and BIE to consult as to whether the TEA will be required to enter into an agreement with BIE that details the respective responsibilities of each entity. We would require such an

agreement if the TEA proposes to conduct SEA-type activities with respect to the tribally controlled schools. For example, if the TEA proposes to monitor the schools for compliance with a State-administered ESEA formula grant program, such as title I, part A (Improving Academic Achievement of the Disadvantaged) or title II, part A (Improving Teacher Quality State Grants), we would require an agreement with BIE because that activity is normally conducted by BIE in its role as SEA with respect to those Department programs.

Under the proposed requirements, a project that includes tribally controlled schools would not be required to enter into an agreement with BIE if the TEA proposes to assume only LEA-type functions with respect to BIE-funded schools. Such LEA-type functions include direct implementation of a grant or staff professional development. However, for all projects that include one or more tribally controlled schools, the TEA applicant must submit a copy of the application to BIE, to enable the appropriate determination to be made. If an agreement with BIE is required, the grantee would submit that agreement to the Department at the same time as the final agreement. If a required agreement with BIE is not reached, the TEA can omit the tribally controlled schools from the STEP grant and include in its final agreement, to be submitted in year one of the grant period, only the public schools on which the SEA, LEA, and TEA have agreed. If that occurs, the grantee would be required to submit a revised budget, and depending on the circumstances, we may reduce the grant award. Nothing in these requirements would prevent any TEA from entering a voluntary agreement with BIE regarding issues such as data-sharing, and any agreement required by the STEP grant need not be limited in time or scope to the STEP activities.

Formula Grant Programs to be Included in STEP Projects. We also propose, based on feedback that we received, to expand the types of formula grant programs that can be included in STEP projects (see the discussion of the definition of ''ESEA formula grant program'' under Proposed Definitions). However, we propose a requirement, described under *Schools and Programs Included in Project,* that projects that include the ESEA title VII Indian education formula grants (which are direct grants to LEAs) as a focus of the STEP grant also include at least one State-administered ESEA formula grant program, in keeping with the purpose of the STEP program.

LEA Commitment. We learned from administering the STEP pilot grants that, in order for projects to be successful, the cooperation of the LEA is essential, and a letter of support signed by the LEA, which was required as part of the STEP pilot application, is not always sufficient to ensure the LEA's cooperation. Thus we propose, under the preliminary and final agreement requirements, that in addition to the TEA and SEA, the LEA or LEAs be required to sign both these agreements as well. In addition, if the project is to include BIE-funded tribally controlled schools, those schools would also need to sign the preliminary and final agreements. These schools are usually direct recipients of ED formula grant funds through BIE, and their cooperation is essential to the success of a project that includes such schools.

Functions to be Performed by TEAs. During our analysis of proposed project budgets for the STEP pilot, we learned that some TEAs are interested in conducting LEA-type activities rather than SEA-type activities, as well as accessing LEA-type student performance data on students who are tribal members. Therefore, under the preliminary agreement requirements, we propose to permit TEAs the flexibility to perform either SEA-type functions or LEA-type functions, under the chosen ESEA program, as agreed upon by the parties. The parties could also agree that the TEA will perform SEA-type functions for a certain program (e.g., title I) or for certain schools (e.g., a public school on the reservation), and LEA-type functions for another program (e.g., title VII) or for other schools (e.g., a tribally controlled school).

Student Data. In administering the STEP pilot grants, we learned that some TEAs are interested in obtaining data on tribal children attending public schools, and we received many questions concerning the privacy requirements of the Family Educational Rights and Privacy Act (FERPA) (section 444 of the General Education Provisions Act, 20 U.S.C. 1232g; 34 CFR part 99). FERPA generally prohibits the disclosure of personally identifiable information (PII) from a student's education records without the prior written consent of the student's parent. LEAs must comply with that requirement before disclosing PII from students' education records to TEAs, unless an exception to the general consent requirement applies that would permit the disclosure. Likewise, SEAs are subject to the FERPA requirements concerning the re-disclosure of PII from students' education records that they received from LEAs and schools in the State. An exception to FERPA's general consent requirement permits LEAs or SEAs to designate an Indian tribe or TEA as its authorized representative to audit or evaluate Federal or State-supported education programs, under the conditions set forth in the Department's regulations. See 34 CFR 99.3, 99.31(a)(3), 99.35. In addition, SEAs and LEAs may share with TEAs any records that have been properly de-identified, in which all PII has been removed. See 34 CFR 99.3 and 99.31(b)(1). Applicants are encouraged to review information and guidance regarding FERPA on the Family Policy Compliance Office's Web site at: *http://www2.ed.gov/policy/gen/guid/fpco/index.html.* The proposed requirements for the preliminary agreement include a description of how the parties will comply with FERPA, if they propose that the TEA will have access to PII from student education records.

Final Agreement Requirements. We learned during the first year of the STEP pilot that the requirements for developing a final agreement were too prescriptive and, in some cases, redundant. The final agreement is crucial to a STEP project's success, and if the TEA is unable to submit a final agreement by the Department-established deadline, it will not receive a continuation award under its grant. Therefore, we propose to streamline some of the elements for both the preliminary and final agreements to make them more practicable.

Proposed Requirements

The Assistant Secretary for Elementary and Secondary Education proposes the following requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

Eligible Applicant: (a) A TEA that is from an eligible Indian tribe and authorized by its tribe to administer this program; or (b) a consortium of such TEAs.

Schools and Programs Included in Project

(a) *Schools.* (1) Projects must include at least two eligible schools, at least one of which must be a public school.

(2) All schools included in the project must receive services or funds for the specific ESEA formula grant program(s) selected by the applicant.

(3) For projects that include one or more tribally controlled schools—

(i) The applicant TEA must include in its application evidence that it submitted a copy of the application to BIE; and

(ii) If the proposed project includes SEA-type functions with regard to the

tribally controlled school, the TEA may be required to enter into an agreement with BIE, to be submitted to the Department at the same time as the final agreement.

(b) *ESEA Formula Grant Programs.* Projects must include at least one ESEA formula grant program that is State-administered.

Preliminary Agreement: An applicant must submit with its application for funding a signed preliminary agreement among the TEA, SEA, and LEA. Letters of support from an SEA or LEA will not meet this requirement and will not be accepted as a substitute.

The preliminary agreement must include:

(a) An explanation of how the parties will work collaboratively to administer selected ESEA formula grant programs in eligible schools;

(b) The primary ESEA formula grant program(s) for which the TEA will assume SEA-type or LEA-type administrative functions;

(c) A description of the primary SEA-type or LEA-type administrative functions that the TEA will assume;

(d) The training and other activities that the SEA or LEA, as appropriate, will provide for the TEA to gain the knowledge and skills needed to administer ESEA formula programs;

(e) The assistance that the TEA will provide to the SEA or LEA, as appropriate, to facilitate the project, such as cultural competence training;

(f) The names of at least one LEA and two or more eligible schools, at least one of which must be a public school, that are expected to participate in the project;

(g) An explanation of how the STEP funds will be used to build on existing activities or add new activities rather than replacing tribal or other funds;

(h) If the parties agree that the TEA will have access to PII from student education records, how the parties will comply with the requirements of section 444 of the General Education Provisions Act (commonly referred to as the Family Educational Rights and Privacy Act); and

(i) Signatures of the authorized representatives of the TEA, SEA, participating LEA(s), and any BIE-funded tribally controlled school that is included in the project.

Final Agreement: Each grantee must submit to the Department a final agreement by the date, in year one of the grant, to be established by the Department in the notice inviting applications. The final agreement must contain:

(a) All of the elements from the preliminary agreement, in final form;

(b) A timetable for accomplishing each of the objectives and activities that the parties will undertake;

(c) Goals of the project and measureable objectives towards reaching the goals; and

(d) The actions that the parties will take to sustain the relationships established in the agreement after the project ends.

Proposed Definitions

Background

We learned from the STEP pilot competition that some TEAs were ineligible for a grant because, although tribal students attended a public school, that public school was not on the reservation. To enable more TEAs to be eligible, we propose to expand the definition of ''eligible schools'' from the definition used in the STEP pilot. Specifically, we propose to permit the parties signing the preliminary agreement to include any public schools, either on, or off, the reservation. In making this decision, we expect that the TEA, SEA, and LEA will consider such factors as the proximity of the school to the reservation and the number of students from the TEA's tribe attending the school. Given the variety in the eligible applicants' circumstances and geographic areas, we do not believe that it would be helpful for the Department to prescribe the factors to use in determining what would be considered an eligible school. The parties must, however, agree on and identify in the preliminary agreement the schools to be included in the project. For schools that have students from multiple tribes, we would expect that a TEA planning a STEP application would first consult with the other relevant tribes.

We also learned from administering the STEP pilot grants that some TEAs want to coordinate better with the LEA to assist with tribal students' transfers between public schools and tribally operated schools, or to coordinate curricula and instructional practices among such schools. We propose expanding the definition of ''eligible schools'' to permit applicants to include in their projects not only public schools but also BIE-funded tribally controlled schools. By including BIE-funded tribally controlled schools, the STEP grants can help TEAs to be better prepared to assist and monitor the tribe's students to help those students succeed academically and graduate from high school. The STEP project would be required to include only schools that receive funding under the selected ESEA programs, regardless of whether the schools are public or tribally controlled (see Requirements, Schools, and Programs Included in Project).

In addition, we learned from the STEP pilot that many TEAs are interested in administering the title VII Indian Education formula grants in the local public school or schools. These are ESEA formula grants that we make directly to LEAs. Therefore, to allow this flexibility, we are including in the definition of ''ESEA formula grant program'' the title VII Indian Education formula grant program. The LEA participating in the STEP project would remain the title VII grantee, just as currently the SEA remains the grantee for the State-administered programs, but the LEA and TEA could agree that the TEA will take on certain administrative functions for the title VII grant (such as planning policy and objectives and oversight of schools' compliance with requirements relating to the use of program funds).

The other definitions are generally the same as those that were used in the 2012 pilot program competition, with the exception of the new definition of ''established TEA,'' which is explained under Proposed Priorities above.

Proposed Definitions

The Assistant Secretary for Elementary and Secondary Education proposes the following definitions for this program. We may apply one or more of these definitions in any year in which this program is in effect.

Cultural competency means the use of culturally responsive education that takes into account a student's own cultural experiences, creates connections between home and school experiences, and uses the cultural knowledge, prior experiences, and learning styles of diverse students to make learning more appropriate and effective.

Eligible Indian tribe means a federally recognized or a State-recognized tribe.

Eligible school means a school that is included in the applicant's preliminary and final agreements, and that is:

(a) A public school, including a public charter school, or

(b) A BIE-funded tribally controlled school.

Established TEA means a TEA that previously received a STEP grant, or that meets one or more of the following criteria, as specified by the Secretary in a notice inviting applications published in the **Federal Register**:

(a) Has an existing relationship with an SEA or LEA as evidenced by a written agreement between the TEA and SEA or LEA;

(b) Has an existing tribal education code;

(c) Has administered at least one education program (for example, a tribally operated preschool or afterschool program) within the past five years;

(d) Has administered at least one Federal, State, local, or private grant within the past five years.

Note: For each competition, the Secretary will publish in the **Federal Register** the minimum number of criteria from this list (such as three out of four), or the specific criteria from this list that an established TEA must meet.

ESEA formula grant program means one of the following programs authorized under the Elementary and Secondary Education Act of 1965, as amended (ESEA), for which States or LEAs receive formula funding:

(a) Improving Academic Achievement of the Disadvantaged ((title I, part A);

(b) School Improvement Grants (Section 1003(g));

(c) Migrant Education (title I, part C);

(d) Neglected and Delinquent State Grants (title I, part D);

(e) Improving Teacher Quality State Grants (title II, part A);

(f) English Learner Education State Grants (title III, part A);

(g) 21st Century Community Learning Centers (title IV, part B); and

(h) Indian Education Formula Grants (title VII, part A).

LEA-type function means the type of activities that LEAs typically conduct, such as direct provision of educational services to students, grant implementation, school district curriculum development and staff professional development pursuant to State guidelines, and data submissions.

SEA-type function means the type of activities that SEAs typically conduct, such as overall education policy development, supervision and monitoring of school districts, provision of technical assistance to districts, statewide curriculum development, collecting and analyzing performance data, and evaluating programs.

Tribal educational agency (TEA) means the agency, department, or instrumentality of an eligible Indian tribe that is primarily responsible for supporting tribal students' elementary and secondary education, which may include early learning.

Proposed Selection Criteria

Background

The Department intends that the selection criteria used for competitions for STEP funds will ensure that STEP projects address the most critical needs of TEAs, SEAs, and LEAs in providing education for Indian youth.

The Department also expects that these selection criteria will help ensure that any projects that are funded under this program will be of high technical quality. Therefore, we are proposing specific factors that are unique to this program among the following selection criteria: Need for project; quality of project design; adequacy of resources; and quality of project personnel. We believe that these proposed selection criteria would help us better select applications for funding and improve the STEP program.

Proposed Selection Criteria

The Assistant Secretary for Elementary and Secondary Education proposes the following selection criteria for evaluating an application under this program. In any year in which this program is in effect, we may apply one or more of these criteria or sub-criteria, any of the selection criteria in 34 CFR 75.210, or any combination of these. In the notice inviting applications or the application package or both, we will announce the maximum possible points assigned to each criterion.

(a) *Need for project.* The Assistant Secretary considers the extent to which the goals and objectives in the preliminary agreement, including the TEA capacity-building activities, address identified educational needs of the Indian students to be served.

(b) *Quality of the project design.* The Assistant Secretary considers one or more of the following factors:

(1) The extent to which the proposed project would recognize and support tribal sovereignty.

(2) The extent to which the preliminary agreement defines goals, objectives, and outcomes of the proposed project that are likely to be achieved by the end of the project period.

(3) The extent to which the proposed project would build relationships and better communication among the TEA, SEA, and LEA, as well as families and communities, to the benefit of Indian students in the selected schools, including by enhancing the cultural competency of SEA and LEA staff.

(4) The extent to which the proposed project would enhance the capacity of the TEA to administer ESEA formula grants during the grant period and beyond.

(c) *Adequacy of resources.* The Assistant Secretary considers the extent to which:

(1) The TEA has established, prior to developing the preliminary agreement, a relationship with either the SEA or an LEA that will enhance the likelihood of the project's success; and

(2) The use of STEP grant funds, as described in the proposed budget, supports the capacity-building activities that are needed to administer ESEA formula grants.

(d) *Quality of project personnel.* The Assistant Secretary considers the extent to which the proposed project director has experience in education and in administering Federal grants.

Final Priorities, Requirements, Definitions, and Selection Criteria

We will announce the final priorities, requirements, definitions, and selection criteria in a notice in the **Federal Register**. We will determine the final priorities, requirements, definitions, and selection criteria after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use one or more of these priorities, requirements, definitions, or selection criteria, we will invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to

review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed priorities, requirements, definitions, and selection criteria only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is 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, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

In assessing the potential costs and benefits—both quantitative and qualitative—of this proposed regulatory action, we have determined that the benefits of the proposed priorities, requirements, definitions, and selection criteria justify the costs. We believe that the proposed priorities, requirements, definitions, and selection criteria would not impose significant costs on eligible TEAs that receive assistance through the STEP program. We also believe that the benefits of implementing the proposed priorities, requirements, definitions, and selection criteria outweigh any associated costs.

We believe that the costs imposed on applicants would be limited to costs associated with developing applications, including developing partnerships with SEAs and LEAs, and that the benefits of creating a partnership that is likely to be sustained after the end of the project period would outweigh any costs incurred by applicants. The costs of carrying out activities proposed in STEP applications would be paid for with program funds. Thus, the costs of implementation would not be a burden for any eligible applicants, including small entities. We also note that program participation is voluntary.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79, except that federally recognized Indian tribes are not subject to those rules. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: October 28, 2014.

Deborah S. Delisle,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2014–25968 Filed 10–30–14; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R06–RCRA–2014–0366; FRL–9918–55–Region–6]

Arkansas: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rule

SUMMARY: The State of Arkansas has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant Final authorization to the State of Arkansas. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the direct final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the direct final rule. Unless we get written comments which oppose this authorization during the comment period, the direct final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we receive comments that oppose this action, we will withdraw

the direct final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by December 1, 2014.

ADDRESSES: Send written comments to Alima Patterson, Region 6, Regional Authorization Coordinator, (6PD–O), Multimedia Planning and Permitting Division, at the address shown below. You can examine copies of the materials submitted by the State of Arkansas during normal business hours at the following locations: Arkansas Department of Environmental Quality, 8101 Interstate 30, Little Rock, Arkansas 72219–8913, (501) 682–0876, and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone number (214) 665–8533 ; or Comments may also be submitted electronically or through hand delivery/courier; please follow the detailed instructions in the **ADDRESSES** section of the direct final rule which is located in the Rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Alima Patterson (214) 665–8533.

SUPPLEMENTARY INFORMATION: For additional information, please see the direct final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: August 22, 2014.

Samuel Coleman,

Acting Regional Administrator Region 6.

[FR Doc. 2014–25725 Filed 10–30–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[EPA–HQ–OPPT–2014–0684; FRL–9918–27]

Discarded Polyvinyl Chloride; TSCA Section 21 Petition; Reasons for Agency Response

AGENCY: Environmental Protection Agency (EPA).

ACTION: Petition; reasons for Agency response.

SUMMARY: This document announces the availability of EPA's response to a petition it received under the Toxic Substances Control Act (TSCA). The TSCA section 21 petition was received from the Center for Biological Diversity (CBD) on July 29, 2014. The petitioner requested that EPA initiate rulemaking under TSCA to address risks related to polyvinyl chloride (PVC), vinyl chloride, and phthalates used as plasticizers. The petitioner alternatively requested that EPA initiate rulemaking under TSCA to require additional toxicity testing of these chemical substances. After careful consideration, EPA has denied the TSCA section 21 petition for the reasons discussed in this document. The TSCA section 21 petition was accompanied by an independent petition for EPA to take action under the authority of the Resource Conservation and Recovery Act (RCRA). EPA continues to review the petitioner's requests for action under RCRA.

DATES: EPA's response to this TSCA section 21 petition was signed October 24, 2014..

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Paul Lewis, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–6738; email address: *lewis.paul@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to those persons who produce, or who use PVC, vinyl chloride, or phthalates used as plasticizers, or substitutes for such chemical substances. Since many other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I access information about this TSCA section 21 petition?

The docket for this TSCA section 21 petition, identified by docket identification (ID) number EPA–HQ–OPPT–2014–0684, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. TSCA Section 21

A. What is a TSCA section 21 petition?

Under TSCA section 21 (15 U.S.C. 2620), any person can petition EPA to initiate a rulemaking proceeding for the issuance, amendment, or repeal of a rule under TSCA section 4, 6, or 8 or an order under TSCA section 5(e) or 6(b)(2). A TSCA section 21 petition must set forth the facts that are claimed to establish the necessity for the action requested. EPA is required to grant or deny the petition within 90 days of its filing. If EPA grants the petition, the Agency must promptly commence an appropriate proceeding. If EPA denies the petition, the Agency must publish its reasons for the denial in the **Federal Register**. 15 U.S.C. 2620(b)(3). A petitioner may commence a civil action in a U.S. district court to compel initiation of the requested rulemaking proceeding within 60 days of either a denial or the expiration of the 90-day period. 15 U.S.C. 2620(b)(4).

B. What criteria apply to a decision on a TSCA section 21 petition?

Section 21(b)(1) of TSCA requires that the petition ''set forth the facts which it is claimed establish that it is necessary'' to issue the rule or order requested. 15 U.S.C. 2620(b)(1). Thus, TSCA section 21 implicitly incorporates the statutory standards that apply to the requested actions. In addition, TSCA section 21 establishes standards a court must use to decide whether to order EPA to initiate rulemaking in the event of a lawsuit filed by the petitioner after denial of a TSCA section 21 petition. 15 U.S.C. 2620(b)(4)(B). Accordingly, EPA has relied on the standards in TSCA section 21 and in the provisions under which actions have been requested to evaluate this TSCA section 21 petition.

III. TSCA Sections 6 and 4

Of particular relevance to this TSCA section 21 petition are the legal standards regarding TSCA section 6 rules and TSCA section 4 rules.

A. TSCA Section 6 Rules

To promulgate a rule under TSCA section 6, the EPA Administrator must find that ''there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture . . . presents or will present an unreasonable risk.'' 15 U.S.C.

2605(a). This finding cannot be made considering risk alone. Under TSCA section 6, a finding of ''unreasonable risk'' requires the consideration of costs and benefits. Furthermore, the control measure adopted is to be the ''least burdensome requirement'' that adequately protects against the unreasonable risk. 15 U.S.C. 2605(a).

In addition, TSCA section 21(b)(4)(B) provides the standard for judicial review should EPA deny a request for rulemaking under TSCA section 6(a): ''If the petitioner demonstrates to the satisfaction of the court by a preponderance of the evidence that . . . there is a reasonable basis to conclude that the issuance of such a rule . . . is necessary to protect health or the environment against an unreasonable risk of injury,'' the court shall order the EPA Administrator to initiate the requested action. 15 U.S.C. 2620(b)(4)(B). Also relevant to the issuance of regulations under TSCA section 6, TSCA section 9(b) directs EPA to take regulatory action on a chemical substance or mixture under other statutes administered by the Agency if the EPA Administrator determines that actions under those statutes could eliminate or reduce to a sufficient extent a risk posed by the chemical substance or mixture. If this is the case, the regulation under TSCA section 6 can be promulgated only if the EPA determines that it is in the ''public interest'' to protect against that risk under TSCA rather than the alternative authority. 15 U.S.C. 2608(b).

B. TSCA Section 4 Rules

To promulgate a rule under TSCA section 4, EPA must make several findings. In all cases, EPA must find that data and experience are insufficient to reasonably determine or predict the effects of a chemical substance or mixture on health or the environment and that testing of the chemical substance is necessary to develop the missing data. 15 U.S.C. 2603(a)(1). In addition, EPA must find either that:

1. The chemical substance or mixture may present an unreasonable risk of injury or

2. The chemical substance is produced in substantial quantities and may either result in significant or substantial human exposure or result in substantial environmental release. 15 U.S.C. 2603(a)(1).

In the case of a mixture, EPA must also find that ''the effects which the mixture's manufacture, distribution in commerce, processing, use, or disposal or any combination of such activities may have on health or the environment may not be reasonably and more efficiently determined or predicted by testing the chemical substances which comprise the mixture.'' 15 U.S.C. 2603(a)(2).

IV. Summary of the TSCA Section 21 Petition

A. What action was requested?

On July 29, 2014, the CBD submitted to EPA a ''Petition for Rulemaking Pursuant to Section 7004(a) of the Resource Conservation and Recovery Act, 42 U.S.C. 6974(A), and Section 21 of the Toxic Substances Control Act, 15 U.S.C. 2620, Concerning the Regulation of Discarded Polyvinyl Chloride and Associated Chemical Additives'' (Ref. 1). (The petitioner stated that it was submitting two ''independent and fully severable'' petitions: One under RCRA and another under TSCA. At this time, EPA is only responding to the TSCA section 21 petition. EPA continues to review the petitioner's requests for action under RCRA.)

The TSCA section 21 petition states that it is requesting issuance of ''regulations governing the safe treatment, storage and disposal of polyvinyl chloride (''PVC''), vinyl chloride and associated dialkyl- and alkylarylesters of 1,2-benzenedicarboxylic acid, commonly known as phthalate plasticizers.'' In its conclusion, the petitioner urges EPA to ''promptly exercise its authority to ensure the safe disposal of discarded PVC.''

The petitioner requested that EPA initiate rulemaking under TSCA section 6 ''to reduce the unreasonable risk to public health and the environment associated with continued dependence'' on PVC, vinyl chloride, and phthalates used as plasticizers. The petitioner also alternatively requested that EPA take action under TSCA section 4 ''requiring manufacturers and processors responsible for the generation of these compounds to undertake additional toxicity testing'' if ''the Agency concludes that there are insufficient data and experience upon which to determine or predict the effects of ubiquitous contamination'' for purposes of making a TSCA section 6 determination.

EPA interprets the TSCA section 21 petition as requesting EPA to initiate a proceeding for the issuance of a rule under TSCA section 6 to address risks related to the disposal of PVC. The TSCA section 21 petition is unclear about whether it is referring to PVC resins or PVC-based products, but, due to its emphasis on risks created by widespread disposal, EPA assumes the TSCA section 21 petition is about PVC-based products (i.e., plastics manufactured from PVC resin). EPA therefore interprets the TSCA section 21 petition as arguing that TSCA regulation of the disposal of PVC-based products is necessary in order to address certain post-disposal risks (including risks relating to chemical substances that the petitioner believes could be released by PVC-based products after disposal).

Due to a lack of specificity regarding the particular action requested, and other grounds described in Unit V., EPA denied the TSCA section 21 petition to initiate rulemaking under TSCA section 6 to address risks from the disposal of PVC. As a part of its analysis, EPA also considered whether a broader interpretation of the TSCA section 21 petition, as furthermore requesting regulation of the manufacture, processing, distribution, or use of PVC, would have altered the Agency's decision. EPA considered whether the facts set forth in the TSCA section 21 petition established that it was necessary to initiate TSCA section 6 rulemaking to ban or otherwise limit any specific use of PVC or vinyl chloride, phthalates as plasticizers, or metal-based heat stabilizers in manufacturing PVC as a means of reducing the quantities of such chemical substances that enter the disposal stream in the first place. As described in Unit V., EPA concluded that, under such a broader interpretation, EPA would have denied the TSCA section 21 petition on similar grounds. The TSCA section 21 petition does not clearly state a pre-disposal risk management action that is sought, let alone demonstrate a risk that is unreasonable.

Finally, EPA notes that it did not construe the petitioner's request for rulemaking under TSCA section 4 as a strictly contingent request, which EPA would only consider if it had previously reached particular factual conclusions on its own initiative (i.e., ''that there are insufficient data and experience upon which to determine or predict the effects of ubiquitous contamination''). Therefore, no inference of implicit agreement with such conclusions should be drawn from the fact that EPA has reviewed whether the TSCA section 21 petition itself sets forth facts sufficient to justify the initiation of rulemaking to require toxicity testing under TSCA section 4.

B. What support does the petitioner offer?

The petitioner states that PVC, vinyl chloride, and phthalates used as plasticizers pose ''significant threats'' to human health and the environment. While the TSCA section 21 petition

includes information on other chemical substances related to PVC (e.g., stating that vinyl chloride is also a concern), it focuses on the use of phthalates as plasticizers in PVC. The TSCA section 21 petition states that phthalates are the most abundant manmade chemicals in the environment and that ''virtually universal'' exposure to phthalates ''could be the leading cause'' of human reproductive disorders. The petitioner expresses concern that ''these compounds'' bioaccumulate in living organisms, interfere with hormone regulation, and alter sexual development. The petitioner also expresses concern that ''human contamination probably exceeds previously published estimates'' and that harm might be occurring from ''exposure pathways outside the scope of traditional toxicity testing,'' such as ''synergistic'' effects from ''multiple phthalates'' or other pollutants. Finally, citing a single study, the petitioner also states that ''less harmful alternatives'' to these chemical substances are available.

V. Disposition of TSCA Section 21 Petition

After careful consideration, EPA denied the petitioner's request to initiate a TSCA section 6 rulemaking, because the TSCA section 21 petition does not:

- Specify what risk management action it is requesting,
- Set forth sufficient facts to establish that the disposal of PVC, vinyl chloride, or phthalates used as plasticizers presents or will present an unreasonable risk, or
- Explain why action under TSCA would be preferable to action under other statutory authorities.

EPA also denied the petitioner's request to initiate a TSCA section 4 rulemaking to require further toxicity testing of PVC, vinyl chloride, or phthalates used as plasticizers, because the TSCA section 21 petition does not set forth sufficient facts for EPA to find that the toxicity information available to the Agency is insufficient to permit a reasoned evaluation of the health or environmental effects of these PVC constituents, or for EPA to conclude that toxicity testing is necessary to develop any missing data.

A. Request for a Rule Under TSCA Section 6

With respect to its request that EPA initiate a proceeding for the issuance of a rule under TSCA section 6 to address risks related to the manner of disposal of PVC, the TSCA section 21 petition's primary deficiencies are its failure to specify the risk management action sought and its failure to discuss several major issues intrinsic to an unreasonable risk determination (i.e., risk reduction that would be accomplished by such action and the reasonably ascertainable economic and other social consequences of the action).

Section 21 of TSCA authorizes any person to petition EPA for the ''issuance . . . of a rule'' under TSCA section 6. As EPA interprets this provision, asking for a rule entails telling EPA, with reasonable specificity, what action is sought in the TSCA section 21 petition. Simply citing to general legal authority and stating a desired outcome does not define an action, and thus fails this threshold requirement under TSCA section 21. EPA's interpretation is consistent with the short 90-day deadline for responding to such rulemaking petitions, as well as with TSCA's grant of *de novo* judicial review to petitioners. In any such proceeding, it would be necessary to supply the court with a specific description of the relief sought to inform any requested injunction that EPA ''initiate the action requested by the petitioner.'' See 15 U.S.C. 2620(b)(4)(B). Since the court's *de novo* review is itself a rehearing of the Agency's prior review of the TSCA section 21 petition, it follows that the TSCA section 21 petition itself must supply the specific description of the relief sought.

Although the TSCA section 21 petition asserts that ''the inadequate management of PVC, vinyl chloride, and phthalate plasticizers poses significant threats to human and ecosystem health,'' the petitioner's argument as to the existence of unreasonable risk is hindered by a nearly complete lack of detail as to the TSCA risk management that it is seeking. While the petitioner stated the overall outcome that it hoped could be achieved (reduce risk to human health and the environment from the disposal of PVC), the petitioner did not state, in any reasonable manner, what action available under TSCA section 6 it sought in order to achieve that outcome.

The TSCA section 21 petition, furthermore, failed to set forth sufficient facts bearing on the relative risk reduction and the reasonably ascertainable economic and other social consequences of the unspecified risk management action. These issues are integral to EPA's assessment of whether rulemaking under TSCA section 6 is necessary and, even more fundamentally, its assessment of whether a particular risk is in fact an unreasonable risk. This is because the finding of unreasonable risk is a judgement under which the decisionmaker determines that the risk of health or environmental injury from the chemical substance or mixture outweighs the burden to society of potential regulations (Ref. 2). Because the TSCA section 21 petition omits discussion of multiple issues that are intrinsic to the finding of unreasonable risk, the TSCA section 21 petition fails to set forth sufficient facts to establish that the disposal of PVC, vinyl chloride, or phthalates used as plasticizers presents or will present an unreasonable risk.

Finally, while the petitioner acknowledges that PVC disposal might also be regulated under other EPA statutory authorities, such as RCRA, it has not explained why it believes it would be preferable to address the risks of disposal under TSCA, rather than through other statutory authorities. The petitioner's views on this question are especially difficult to infer given the absence of information about the particular TSCA risk management action sought. This omission is an impediment to assessing whether a TSCA section 6 rule would be an appropriate means of reducing potential risks related to the disposal of PVC, and (if so) how such action could be coordinated, consistent with TSCA section 9(b), with other actions that EPA has already taken with respect to these chemical substances under other statutes that EPA administers.

For example, the petitioner did not explain why it believes vinyl chloride poses an unreasonable risk that should be addressed under TSCA despite the impact of multiple rules regulating this chemical substance under the Clean Air Act (42 U.S.C. 7400 *et seq.*), including one that was recently established in 2012 (Ref. 3). See 40 CFR part 61, subpart F, and 40 CFR part 63, subparts DDDDDD and HHHHHHH.

EPA also notes that, if it had construed the TSCA section 21 petition more broadly (i.e., as also seeking actions to address the manufacturing, processing, distribution in commerce, and use of PVC), then the TSCA section 21 petition's deficiencies would have been multiplied still further, since there would have been even more uncertainty as to the risk management being sought and, thus, even more uncertainty as to the existence of an unreasonable risk that would be necessary to regulate under TSCA section 6.

Though offering some limited information (i.e., noting PVC production volumes, supplying some basic information on the uses of PVC, and citing a paper that lists some possible candidate substitutes for di (2-ethylhexyl)phthalate (DEHP), the TSCA

section 21 petition largely omits the sort of information that would be relevant to a cost-benefit and regulatory alternatives analysis for a proposed rule to require the substitution of the chemical substances currently used in the manufacture of PVC. The TSCA section 21 petition provides almost no information on the usefulness and effectiveness of particular substitutes, their relative toxicity, cost, degree of availability, and potential to reduce risk. The TSCA section 21 petition also does not include any information on the costs and benefits of regulatory alternatives to explain why the petitioner believes any particular risk management action is the least burdensome requirement that adequately protects against an unreasonable risk.

For example, the TSCA section 21 petition lacks a meaningful discussion of the feasibility and implications of replacing vinyl chloride, any particular phthalate currently used as a plasticizer in PVC, or any particular heat stabilizer currently used in PVC. While the petitioner makes a passing reference to ''the availability of less harmful alternatives,'' the TSCA section 21 petition does not identify any specific chemical substance as a reasonable substitute for any other chemical substance currently in use in PVC products. In support of its general suggestion that ''less harmful alternatives'' are available, the TSCA section 21 petition cites only a single study, which was itself limited to reviewing ''candidates'' for replacing one specific phthalate (DEHP). The review itself was, furthermore, limited to assessing how well the candidate chemical substances satisfied leachability criteria (Ref. 4).

EPA published an action plan for phthalates in 2009. For purposes of the plan, EPA identified eight phthalates as appropriate subjects for development of an assessment and management strategy: butyl benzyl phthalate (BBP), dibutyl phthalate (DBP), DEHP, diisobutyl phthalate (DIBP), diisodecyl phthalate (DIDP), diisononyl phthalate (DINP), di-*n*-pentyl phthalate (DnNPP), and di-*n*-octyl phthalate (DnOP). See, *http://www.epa.gov/opptintr/existingchemicals/pubs/actionplans/phthalates.html.* EPA's Phthalates Action Plan (Ref. 5) already observes that there are ''various *possible* alternatives of phthalates in plasticized PVC.'' See, *http://www.epa.gov/oppt/existingchemicals/pubs/actionplans/phthalates_actionplan_revised_2012-03-14.pdf.* While the study cited by the petitioner is consistent with EPA's prior observation, the TSCA section 21 petition has not set forth facts (e.g., bearing on relative risks, benefits, utility, and cost) to establish that a TSCA section 6 rule requiring the replacement of particular PVC plasticizers in one or more particular applications would be necessary.

B. Request for Action Under TSCA Section 4

Apparently anticipating that EPA might deny its request to issue a TSCA section 6 rule on the grounds that there are not sufficient toxicity data to justify a section 6 rule, the petitioner asked EPA to alternatively adopt a rule under TSCA section 4 requiring manufacturers and processors of PVC, vinyl chloride, and phthalate plasticizers ''to undertake additional toxicity testing.''

EPA's denial of the request to issue a TSCA section 6 rule is not predicated on a determination that there are insufficient toxicity data to justify action under TSCA section 6. Furthermore, the TSCA section 21 petition's failure to set forth evidence to justify the necessity of rulemaking under TSCA section 6 is not in itself evidence that the currently available toxicity information is inadequate. As noted in Unit IV.A., many of the information gaps in the submitted TSCA section 21 petition are either unrelated, or only indirectly related, to the toxicity of these chemical substances. And the petitioner does not contend that its efforts to explain why rulemaking under TSCA section 6 is necessary were impeded by a lack of information about the toxicity of these chemical substances.

EPA is denying the request for rulemaking under TSCA section 4 because the TSCA section 21 petition does not set forth sufficient facts for EPA to find that the toxicity information available to the Agency is insufficient to permit a reasoned evaluation of the health or environmental effects of these chemical substances, or for EPA to conclude that toxicity testing is necessary to develop any missing data.

Although the petitioner suggests in very general terms that ''[non-] traditional toxicity testing'' might produce results showing that these chemical substances are riskier than currently known, the petitioner does not identify any particular deficiency in what is currently known about the toxicity of these chemical substances, or specify what kind of ''non-traditional'' toxicity tests the petitioner believes are necessary. Neither does the TSCA section 21 petition indicate whether (and if so, why) the petitioner believes that any deficiencies in the availability of information about the toxicity of these chemical substances are precluding a reasoned evaluation of health or environmental effects. Even if the TSCA section 21 petition had established that the currently available toxicity information could be improved in particular respects for one or more of these chemical substances, it would not automatically follow that the currently available toxicity information is insufficient to permit a reasoned evaluation of health or environmental effects.

VI. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. CBD. Petition for Rulemaking Pursuant to Section 7004(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6974(A), and Section 21 of the Toxic Substances Control Act, 15 U.S.C. § 2620, Concerning the Regulation of Discarded Polyvinyl Chloride and Associated Chemical Additives. July 29, 2014.

2. EPA. Lead Fishing Sinkers; Response to Citizens' Petition and Proposed Ban; Proposed Rule. **Federal Register** (59 FR 11122, March 9, 1994) (FRL–4643–3).

3. EPA. National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production; Final Rule. **Federal Register** (77 FR 22848, April 17, 2012) (FRL–9636–2).

4. Kastner *et al.* Aqueous leaching of di-2-ethylhexyl phthalate and 'green' plasticizers from poly(vinyl chloride). *Science of the Total Environment.* p. 432. 2012.

5. EPA. Phthalates Action Plan. Revised. March 14, 2012.

List of Subjects in Chapter I

Environmental protection, Hazardous substances, Phthalates, Plasticizers, Polyvinyl chloride, Vinyl chloride.

Dated: October 24, 2014.

James Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2014–25849 Filed 10–30–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1336

RIN 0970–AC60

Native American Programs

AGENCY: Administration for Native Americans, Administration for Children and Families, Department of Health and Human Services.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans (ANA) is seeking comments, data, and information from the public related to planned revisions and amendments to regulations implementing the Native American Programs Act of 1974 (the NAPA). ANA anticipates making revisions and amendments to update and revise procedures and policies involved in executing the requirements of 42 U.S.C. 2991b, 2991b–1, 2991b–2, 2991b–3, 2991d, 2991g, 2991h, 2992, and 2992b–1 (Section 803, 803A, 803B, 803C, 805, 809, 810, 811, and 814 of the NAPA) currently found in our regulations. ANA is interested in receiving feedback to this advance notice of proposed rulemaking (ANPRM) about potential means of streamlining applicable regulations, removing undue burdens, and clarifying procedures and policies related to accessing programs. We are also interested in receiving recommendations related to the activities of the Commissioner of the Administration for Native Americans as an advocate on behalf of Native Americans.

DATES: Comments on this ANPRM must be received by January 29, 2015.

ADDRESSES: You may submit comments by any of the methods listed below (please choose only one listed). All submissions must include the agency name and following Regulatory Identification Number (RIN): RIN 0970–AC60. Please do not submit duplicate comments. When commenting, please identify the current regulation, topic, or issue to which your comment pertains.

1. Electronic submission: You may submit electronic comments on this ANPRM to *http://www.regulations.gov* by entering RIN 0970–AC60 in the search box and clicking on the 'Comment Now' button. After submitting your comment electronically at *http://www.regulations.gov,* a confirmation page will appear which contains a Comment Tracking Number. Comments also may be submitted electronically via email to *ANACommissioner@acf.hhs.gov* with ''ANA ANPRM'' in the subject line.

2. Mail: You may mail written comments to the following address only: Administration for Native Americans, Administration for Children and Families, Department of Health and Human Services, Attention: ANA ANPRM, 370 L'Enfant Promenade, Washington DC 20447. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. Hand delivery: If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to Camille Loya, Administration for Native Americans, 370 L'Enfant Promenade, Washington, DC 20447. Because access to the interior of the building is not readily available to persons without Federal government identification, commenters must first call 877–922–9262 in advance to schedule an escort to the second floor and may not leave their comments at the security desk located in the main lobby of the building. Commenters will be escorted to the Administration for Native Americans where a stamp-in clock is available for persons wishing to retain a proof of filing by stamping and retaining an extra copy of the comments being filed.

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. The Department will 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 electronically via *http://www.regulations.gov* by the close of the comment period will also be available for public inspection electronically as they are received. Comments submitted electronically via email to *ANACommissioner@acf.hhs.gov*, hand-delivered comments, and mailed comments will be available for public inspection within one week of receipt at the Administration for Native Americans, 370 L'Enfant Promenade, Washington, DC 20447. Because access to the interior of the building is not readily available to persons without Federal government identification, commenters must first call 877–922–9262 in advance to schedule an escort to the second floor. No deletions, modifications, or redactions will be made to the comments received, as they are public records. Comments may be submitted anonymously. However, comments that identify the type of organization responding to this ANPRM are especially helpful.

FOR FURTHER INFORMATION CONTACT: Camille Loya, Administration for Native Americans at (202) 401–5964.

SUPPLEMENTARY INFORMATION: This ANPRM has two main sections. The first section, entitled 'Background,' describes the relevant authority on which the ANPRM is based and establishes the rationale for its issuance at this time. The second section, entitled 'Overview of Requested Feedback,' presents questions, ideas, and potential language ANA is considering as part of future proposed regulations under the authority of the NAPA.

I. Background

The Native American Programs Act of 1974 (NAPA), Public Law 93–644, was first enacted on January 4, 1975. The last time substantial amendments to the NAPA regulations were made was 1996. Section 802 of the NAPA establishes as its broad statutory purpose the promotion of ''the goal of economic and social self-sufficiency for American Indians, Native Hawaiians, other Native American Pacific Islanders (including American Samoan Natives), and Alaska Natives.'' The Administration for Native Americans (ANA) executes this purpose through the provision of project-based financial assistance to Native Americans authorized under sections 803 and 803C of the NAPA, as well as through advocacy on behalf of Native Americans within the Department of Health and Human Services and with other departments and agencies of the Federal government ''regarding all Federal policies affecting Native Americans,'' under section 803B (c) of the NAPA.

The regulations that are the subject of this Advance Notice of Proposed Rulemaking (ANPRM) are found in 45 CFR Part 1336. These regulations provide or describe rules necessary to fully implement the NAPA's statutory requirements and authorities and primarily originate from 1983, with the last updates occurring in 1996. Given the length of time since the last consideration of the NAPA regulations, through this ANPRM ANA is particularly interested in seeking information and recommendations from recipients and potential recipients of ANA financial assistance as well as

from Native Americans at-large who are the intended beneficiaries of the NAPA.

II. Overview of Requested Feedback

On July 9 and 10, 2013 the Administration for Children and Families (ACF) hosted a tribal consultation in Washington, DC to consult on ACF programs and tribal priorities. This consultation helped ANA identify issues of concern and interest to the Indian tribes and Native American serving organizations in attendance and provided detailed and fact-based information on the challenges facing Indian tribes, children, and families, particularly related to the language and cultural vitality of Native American communities. This ANPRM presents both general and targeted topics of interest to help prompt additional feedback related to both the financial assistance that ANA provides as well as topics related more broadly to policy development affecting Native Americans. It also welcomes all points of view on how to streamline regulatory requirements and procedures, provide clarity, and maximize flexibility balanced with ANA oversight and advocacy responsibilities.

Pursuant to ACF's Tribal Consultation Policy, ANA believes this ANPRM can be considered a form of tribal consultation under section 8.H.3 of such Policy. Accordingly, we intend to provide a detailed report on the comments, recommendations, and other input we receive summarizing the specific comments or groups of comments, responses, and other input received in response to this ANPRM.

At such time as we are prepared to propose specific revisions and updates to the NAPA regulations, we will engage in notice-and-comment rulemaking and publish a Notice of Proposed Rulemaking (NPRM) in the **Federal Register**. In accordance with standard rulemaking procedures, the public will have an opportunity to comment on our proposed revisions at that time. Then, when the final rule is promulgated, ANA will summarize and respond to all substantive comments received on the NPRM.

A. General Regulatory Topics of Interest

We are interested in comments and recommendations related to:

- The scope and content of regulatory definitions (45 CFR 1336.10).
- Are there terms referenced in the regulations for which a regulatory definition would be helpful? For example, a definition for 'delegate agency,' 'Funding Opportunity Announcement,' 'maintenance of effort,' 'Office of Chief Executive,' or 'third-party T/TA'.
- Procedures governing the financial assistance award process for Native American social and economic development projects, including projects supporting Native languages and regulation of environmental quality (45 CFR 1336.31–1336.35 and 1336.50–1336.52).
- Alaska is 2.5 times the size of Texas and Alaska Natives make up 229 tribes living in over 220 rural villages, the majority of which are accessible only by plane or boat, weather permitting. The great distances in Alaska from one community to another, and from the state to the rest of the United States, present unique and varied challenges. ANA is interested in how such challenges affect applications for funding.
- Eligibility for ANA financial assistance (45 CFR 1336.33).
- Project evaluation standards by which ANA will measure the impact of funded projects, their effectiveness in achieving stated goals, their structure and mechanisms for delivery of services, and their impact on related programs (45 CFR 1336.40).
- ANA is interested in grantees' and potential grantees' views about what information, factors, or other data are most relevant to ANA's evaluation of overall impact and effectiveness of ANA-funded projects.
- ANA is interested in grantees' and potential grantees' views about potential methods for evaluating the impact of ANA-funded projects three or more years after a grant award period has ended.
- ANA is interested in grantees' and potential grantees' views on required project reporting, including views on the frequency and burden associated with reporting and any recommendations related to how data reports could be shared with stakeholders.
- Updates to subpart F governing ANA oversight of the Native Hawaiian Revolving Loan Fund (45 CFR 1336.60–1336.77).
- ANA is interested in hearing from Native Hawaiians who have benefited from the Native Hawaiian Revolving Loan Fund on how the Fund has increased economic opportunities, capital formation, and credit worthiness for Native Hawaiians.
- ANA is interested in views on allowable loan activities, time limits, and loan conditions.
- Recently, ANA has issued clarifications describing prohibited conflicts of interest related to ANA-funded projects. ANA is considering establishing, in regulation, a comprehensive definition of a 'prohibited conflict of interest' in order to minimize potential confusion.
- ANA is interested in feedback on the following definition of 'prohibited conflict of interest':

Prohibited conflict of interest means a clash between the private interests of a person and that person's official duties and obligations under a project receiving ANA grant that cannot be resolved by recusal of the person from discussions, decisions, and actions in one role that affects the other.

B. Special Topics of Interest

In addition to comments and recommendations responsive to Section II.A., ANA invites views and recommendations addressing the following topics:

- Descriptions of the perceived barriers to Native American economic and social self-sufficiency and any recommendations to address such barriers.
- Viewpoints on indicators of economic stability in Native American communities (such as poverty rate, earnings, employment, and educational attainment) and recommendations for improvements to promote increased economic self-sufficiency.
- Thoughts on the roles of historical trauma and/or toxic stress in creating risks to the physical and mental health of Native American adults and children and recommendations for remediating such risks.
- Information on the perceived impediments to Native Americans' greater participation in state-wide initiatives such as Quality Rating and Improvement Systems (QRIS) or state-wide data sharing.

III. Conclusion

With this ANPRM, ANA is seeking input on issues and questions related to the subjects raised in the ANPRM that are of concern or interest to relevant stakeholders.

Dated: June 17, 2014.

Mark Greenberg,

Acting Assistant Secretary for Children and Families.

Approved: August 5, 2014.

Sylvia M. Burwell,

Secretary.

[FR Doc. 2014–25921 Filed 10–30–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 131211999–4854–01]

RIN 0648–BD86

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region; Amendment 20B

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 20B to the Fishery Management Plan for the Coastal Migratory Pelagic Resources (CMP) in the exclusive economic zone (EEZ) of the Gulf of Mexico and Atlantic Region (FMP) (Amendment 20B), as prepared and submitted by the Gulf of Mexico (Gulf) and South Atlantic Fishery Management Councils (Councils). If implemented, Amendment 20B and this proposed rule would modify Gulf migratory group king mackerel trip limits and fishing years, allow transit through areas closed to king mackerel fishing, create zones and quotas for Atlantic migratory group king and Spanish mackerel, modify the framework procedures for the FMP, increase annual catch limits (ACLs) for cobia, and create an east coast zone and quotas for Gulf migratory group cobia. In addition, this rule proposes to reorganize the description of CMP zones in the regulations and clarify that spearguns and powerheads are allowable gear for cobia in Federal waters of the South Atlantic and Mid-Atlantic regions. The purpose of this rule is to help achieve optimum yield (OY) for the CMP fishery while ensuring allocations are fair and equitable and fishery resources are utilized efficiently.

DATES: Written comments must be received on or before December 1, 2014.

ADDRESSES: You may submit comments on the proposed rule, identified by ''NOAA–NMFS–2013–0176'' 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-2013-0176,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Susan Gerhart, 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.

Electronic copies of Amendment 20B, which includes an environmental assessment, a Regulatory Flexibility Act analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_sa/cmp/index.html.*

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: 727–824–5305, or email: *Susan.Gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The CMP fishery in the Gulf and Atlantic is managed under the FMP. The FMP was prepared by the Councils and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The current management regime for CMP species (king mackerel, Spanish mackerel, and cobia) includes two migratory groups for each species, the Gulf migratory group and the Atlantic migratory group. Each migratory group is managed separately. Amendment 20B and this rule propose changes and additions to fishing regulations for each migratory group to allow for more targeted management of CMP species.

Management Measures Contained in Amendment 20B and This Proposed Rule

Amendment 20B and this rule would modify Gulf migratory group king mackerel trip limits and fishing years, allow transit through areas closed to king mackerel fishing, create zones and quotas for Atlantic migratory group king and Spanish mackerel, modify the framework procedures for the FMP, increase ACLs for cobia, and create an east coast zone and quotas for Gulf migratory group cobia. The purpose of this rule is to help achieve OY for the CMP fishery while ensuring allocations are fair and equitable and fishery resources are utilized efficiently.

Gulf Migratory Group King Mackerel Commercial Hook-and-Line Trip Limits

The Gulf eastern zone's Florida west coast subzone is comprised of two subzones, northern and southern. Currently, from July 1, each fishing year, until 75 percent of the respective northern or southern subzone's hook-and-line gear king mackerel quota has been harvested, the commercial trip limit is 1,250 lb (567 kg) per day. From the date that 75 percent of the respective northern or southern subzone's hook-and-line gear quota has been harvested, the trip limit is reduced to 500 lb (227 kg) per day. This trip limit would remain in effect for a subzone until that subzone's quota is reached or projected to be reached and that subzone is closed by **Federal Register** notice. This rule proposes to remove the trip limit reduction, which would allow the harvest of 1,250 lb (567 kg) per day until the quota for the subzone has been met or projected to be met and the respective subzone is closed to king mackerel harvest. Originally, the trip limit reductions were intended to extend the fishing seasons; however, NMFS has not always been able to implement the reductions in a timely manner before the entire quota is landed. Also, many vessels cannot make a profit when the trip limit is reduced to 500 lb (227 kg), so the extended season did not benefit them.

The western zone hook-and-line trip limit remains 3,000 lb (1,361 kg) per day until the western zone's quota has been harvested and the zone is closed to king mackerel harvest.

Gulf Migratory Group Eastern Zone Northern and Southern Subzone King Mackerel Fishing Years

Currently the Florida west coast northern subzone fishing year begins July 1 and ends on June 30, or when the quota is reached or projected to be reached. This rule proposes to change the Florida west coast northern subzone fishing year to October 1 through September 30. Some fishers have indicated that a later opening would allow them to harvest king mackerel more efficiently because fish are present in larger numbers closer to shore in the

fall, as opposed to the summer. They also claim that fish can be kept in better condition due to cooler weather. A later opening might also discourage movement of fishers from the Atlantic coast of Florida into the Florida Panhandle, as has been the case for several years. Such a change could extend the fishing season. Because the Councils did not select a preferred alternative for the southern subzone, the fishing year in that zone will remain July through June.

Transit Through Areas Closed to King Mackerel

Currently, persons who fish with a commercial vessel permit for king mackerel may not fish for or possess king mackerel in a closed zone. This rule proposes to allow a vessel with a valid commercial vessel permit for king mackerel that has onboard king mackerel harvested in an open area of the EEZ to transit through areas closed to the harvest of king mackerel due to a quota closure, if fishing gear is appropriately stowed. For the purpose of this provision, transit means a direct and non-stop continuous course through the area. Fishing gear appropriately stowed means that: (1) A gillnet must be left on the drum (any additional gillnets not attached to the drum must be stowed below deck), (2) a rod and reel must be removed from the rod holder and stowed securely on or below deck, (3) terminal gear (*i.e.,* hook, leader, sinker, flasher, or bait) must be disconnected and stowed separately from the rod and reel, and (4) sinkers must be disconnected from the down rigger and stowed separately.

Many fishermen live and work near a boundary between two zones, and may wish to fish in one zone, but land in another. When the fisherman's home port is located in a closed zone, the fisherman must travel to another port within the open zone to land their catch. This transit provision would allow fishermen to operate their businesses more economically, and would promote greater safety at sea through decreased transit times.

Atlantic Migratory Group King and Spanish Mackerel Zones

Currently, one commercial quota applies to Atlantic migratory group king mackerel and one commercial quota applies to Atlantic migratory group Spanish mackerel. This rule proposes to create northern and southern zones for Atlantic migratory group king and Spanish mackerel, each with separate commercial quotas. The South Atlantic Council expressed concern that the commercial quota for king mackerel could be harvested by fishermen in one state before fish migrate to another state. The boundary between the zones would be a line extending from the South Carolina/North Carolina state line. The commercial ACL would be split between the zones based on landings from the 2002/2003–2011/2012 fishing years. The northern zone allocation would be calculated using combined commercial landings from North Carolina, Virginia, Maryland, Delaware, Pennsylvania, New Jersey, and New York. The southern zone allocation would be calculated using combined commercial landings from South Carolina, Georgia, the Florida east coast, and Florida Keys on the Atlantic side.

For king mackerel, applying this formula results in an allocation of 33.3 percent for the northern zone and 66.7 percent for the southern zone. For Spanish mackerel, the formula results in an allocation of 19.9 percent for the northern zone and 80.1 percent for the southern zone. NMFS would monitor the commercial quotas, and close Federal waters in each zone when the respective quota is reached or projected to be reached. Transfer of quota between zones would be allowed through a request to NMFS initiated by either North Carolina (northern Zone) or Florida (southern Zone). The recreational ACLs for Atlantic migratory group king and Spanish mackerel will remain unchanged.

Modifications to the FMP Framework Procedures

Currently, any changes to acceptable biological catches (ABCs) and ABC control rules, ACLs and ACL control rules, and accountability measures must be established through a plan amendment. This rule proposes changes that would allow modification to these management measures under the standard documentation process of the open framework procedure. Adding the items described above to the framework procedure would be consistent with the frameworks of other South Atlantic and Gulf of Mexico FMPs and would expedite changes needed after a new stock assessment. The standard open framework procedure involves the development of a framework amendment, with appropriate environmental analyses, which receives Council review and public comment. This rule also proposes to modify the framework procedures to the FMP to designate responsibility to each council (Gulf or South Atlantic) for setting specified management measures for the migratory groups of each species. This change will allow the appropriate Council to establish or modify the specified management measures without approval from the other council.

Additionally, ''sale and purchase restrictions'' and ''transfer at sea provisions'' were previously erroneously included in the final rule implementing Amendment 18 to the FMP for modifications that are allowed through the framework process (76 FR 82058, December 29, 2011). Thus, NMFS proposes to remove these two items from the list in § 622.389.

Cobia Zones, ACLs, and Annual Catch Targets (ACTs)

This rule also proposes to address the results of the most recent stock assessment for Gulf and South Atlantic cobia. In Amendment 18 to the FMP, the Councils established separate migratory groups of cobia using the Councils' boundary in Monroe County. However, the determination in the most recent stock assessment is that the biological boundary should be at the Florida/Georgia line. The stock assessment results define Georgia north through the Mid-Atlantic area for the Atlantic migratory group, and the entire east coast of Florida through Texas for the Gulf migratory group. To adjust for this difference between the Councils' jurisdictional areas for cobia and the areas used by the stock assessment, Gulf migratory group cobia would be divided into a Gulf zone (Texas through the Gulf side of the Florida Keys) and a Florida east coast zone (east coast of Florida and Atlantic side of the Florida Keys, *i.e.,* the area within the South Atlantic Council's jurisdiction). The Gulf ACL would be allocated between the zones based on landings from the 1998–2012 fishing years. The South Atlantic Council would be responsible for regulations for the Florida east coast zone, similar to management of the Florida east coast subzone for king mackerel. The Councils and NMFS have determined allocating cobia between these zones would result in a fair and equitable distribution of the resource. This rule also proposes increases in the ACLs for both migratory groups, the recreational ACT for the Atlantic migratory group, and the stock ACT for the Gulf zone.

Additional Management Measures Contained in This Proposed Rule

This rule proposes to reorganize the description of the CMP zones and subzones so they are all contained in one place in the regulations and are easier for the public to find and understand (see the addition of § 622.369 in the codified text below). Currently, the zone descriptions are

found in multiple locations in the regulations, and NMFS determined that consolidating these descriptions would be useful. Additionally, NMFS proposes to include figures of these zones in the regulations to provide visual guides for the descriptions of these zones (see Appendix G to part 622 in the codified text below).

In addition, this rule would clarify that spearguns and powerheads are allowable gear for cobia in Federal waters of the South Atlantic and Mid-Atlantic regions. In 1998, the Councils approved Amendment 8 to the FMP, which included lists of allowable gear for each CMP species by Council jurisdictional area. The implementing regulations for Atlantic cobia listed automatic reel, bandit gear, handline, rod and reel, and pelagic longline as allowable gear in the directed fishery. Unauthorized gear (with the exception of some gillnets) was subject to the possession limit for cobia (2 fish per person per day). The final rule implementing Amendment 8 clarified that spearguns and powerheads would be allowed for take of cobia under the 2-fish possession limit.

In 2002, FWC enforcement questioned the use of this gear based on the regulations. During its June 2002 meeting, the South Atlantic Council discussed its intent to allow this gear for cobia. NMFS released a Southeast Fishery Bulletin in July of that year clarifying that spearguns and powerheads are allowable gear for cobia, and that the regulations would be revised to more clearly express that determination. However, the regulations were not modified at that time. In 2013, FWC enforcement again asked NMFS to clarify this issue. Based on the history mentioned above, NMFS is now proposing to update the regulations to clarify that spearguns and powerheads are allowable gear for cobia in Federal waters of the South Atlantic and Mid-Atlantic regions.

CMP Framework Amendment 1

The Councils developed Framework Amendment 1 to the FMP, which would, in part, increase the ACLs for Atlantic migratory group Spanish mackerel, based on the results of the most recent stock assessments for Atlantic and Gulf migratory group Spanish mackerel. A proposed rule for Framework Amendment 1 published on July 31, 2014 (79 FR 44369) and the comment period ended on September 2, 2014. Implementation of the increased ACL for Atlantic migratory group Spanish mackerel through the final rule for Framework Amendment 1 would increase the ACL for Atlantic migratory group Spanish mackerel. Therefore, if a final rule implementing Framework Amendment 1 is published before this rule becomes effective, the values for the northern and southern zone quotas for Atlantic migratory group Spanish mackerel contained in this proposed rule for Amendment 20B would increase in the final rule.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with Amendment 20B, the FMP, the Magnuson-Stevens Act and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The objective of the proposed actions is to achieve OY while ensuring allocations are fair and equitable and fishery resources are utilized efficiently. The Magnuson-Stevens Act provides the statutory basis for this proposed rule.

This proposed rule, if implemented, would be expected to directly affect all commercial and for-hire fishing vessels that harvest CMP species managed in the Gulf and Atlantic regions. A Federal commercial permit is required to harvest king mackerel or Spanish mackerel in the Gulf or Atlantic EEZ in excess of the bag limit and to sell these species. On November 7, 2013, 1,479 vessels possessed a valid (non-expired) or renewable commercial king mackerel permit, and 1,813 vessels possessed a valid commercial Spanish mackerel permit. A renewable permit is an expired permit that may not be actively fished, but is renewable for up to 1 year after expiration. Because the Federal commercial Spanish mackerel permit is an open access permit, expired permits are not renewed; if a permit expires before renewal, a new permit will be issued (if applied for) instead of renewal of the expired permit. A Federal commercial permit is not required to harvest cobia. However, over the period 2008–2012, an average of 432 commercial vessels harvested cobia in the Atlantic and 266 commercial vessels harvested cobia in the Gulf each year. Many vessels possess both the king mackerel and Spanish mackerel permits and harvest each of the three CMP species. As a result, many, if not most, of the vessels harvesting cobia are expected to be included in the counts of vessels having the individual king or Spanish mackerel commercial permits. The number of unique vessels across all three species is unknown. The estimated average annual gross revenue from all fishing activity by commercial vessels in these fleets ranges from an average of approximately $31,000 (2011 dollars) for vessels with recorded harvests of Atlantic migratory group Spanish mackerel to approximately $114,000 (2011 dollars) for vessels with recorded harvests of Gulf migratory group cobia. The average annual gross revenue by vessels with recorded harvests of the other species encompassed by this proposed rule falls within this range.

A Federal for-hire (charter/headboat) vessel permit is required for for-hire vessels to harvest CMP species in the Gulf or Atlantic EEZ. On November 7, 2013, 1,360 vessels had a valid or renewable Federal Gulf for-hire CMP permit and 1,427 vessels had a valid Federal Atlantic for-hire CMP permit. Similar to the Spanish mackerel commercial permit, the Atlantic for-hire CMP permit is an open access permit and expired permits are not renewed. The Gulf for-hire permit is limited access. The for-hire fleet is comprised of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. Although the for-hire permit application collects information on the primary method of operation, the resultant permit itself does not identify the permitted vessel as either a headboat or a charter vessel, operation as either a headboat or charter vessel is not restricted by the permitting regulations, and vessels may operate in both capacities. However, only federally permitted headboats are required to submit harvest and effort information to NMFS Southeast Region Headboat Survey (HBS). Participation in the HBS is based on determination by the Southeast Fisheries Science Center that the vessel primarily operates as a headboat. On March 1, 2013, the HBS included 70 vessels in the Gulf and 75 vessels in the Atlantic. As a result, 1,290 of the vessels with a valid or renewable Gulf for-hire CMP permit and 1,400 of the vessels with a valid Atlantic for-hire CMP permit are expected to primarily operate as charterboats. In the Gulf, the average charterboat is estimated to earn approximately $80,000 (2011 dollars) in annual revenue and the average headboat is estimated to earn

approximately $242,000. For the Atlantic, the comparable estimates are approximately $111,000 (2011 dollars) and $197,000 for charterboats and headboats, respectively.

NMFS has not identified any other small entities that would be expected to be directly affected by this proposed rule.

The SBA has established size criteria for all major industry sectors in the U.S., including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $19.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. The receipts threshold for a business involved in the for-hire fishing industry is $7.0 million (NAICS code 487210, fishing boat charter operation). Because the average annual revenue estimates provided above are significantly less than the SBA revenue thresholds for the appropriate sectors, all commercial and for-hire vessels expected to be directly affected by this proposed rule are believed to be small business entities.

This proposed rule would not require any new reporting, record-keeping, or other compliance requirements associated with reporting or record-keeping that may require professional skills.

This proposed rule contains seven separate actions. The first action would eliminate the commercial trip limit reduction provisions that are currently required in two Gulf subzones when 75 percent of the subzone quota is harvested. Trip limit reductions are intended to extend the time before the quota is harvested and, because quota monitoring is not instantaneous, reduce the likelihood and amount of quota overages. However, trip limit reductions lower the profitability of trips, as fewer pounds can be harvested. Even when other species can be substituted, which may not routinely be possible, trip profits would be expected to decline when trip limit reductions are imposed; otherwise fishermen would have shifted to more profitable species or fishing practices in the absence of the trip limit reductions. In the case of Gulf migratory group king mackerel, the reduced trip revenue and profits under the current trip limit reductions are believed to exceed the economic benefits associated with prolonging the season or addressing quota issues. As a result, the proposed elimination of the commercial trip limit reduction for Gulf migratory group king mackerel in the two subzones would be expected to result in increased revenue and profits to affected entities.

The second action would change the fishing year for the Gulf group king mackerel eastern zone northern subzone to begin October 1. This proposed action would be expected to affect commercial vessels that harvest king mackerel. The economic effects of these proposed changes on these small entities are unknown. Participation and financial success in king mackerel commercial fishing is affected by the migratory behavior of the species, regional quotas, transient and part-time participation by fishermen that homeport in each respective zone or travel from ports in other zones, and the ability to participate in other fisheries. Although king mackerel may be present throughout the Gulf year-round, migration patterns cause stock densities in a given area to vary independent of fishing pressure. Regional quotas result in zone and subzone closures when quotas are met, although king mackerel remain present and stock densities may remain high. Many fishermen travel throughout the Gulf to take advantage of migratory stock pulses (surges in the stock in an area because fish have migrated into that area) or in reaction to fishing restrictions, such as a king mackerel quota closure or restriction on alternative species, near their homeport. Other fishermen may harvest king mackerel on a part-time basis, which can cause wide fluctuation in the amount of fishing effort applied. Finally, some fishermen possess permits to participate in other fisheries, as a commercial or for-hire vessel, while other fishermen do not have these permits and, as a result, have more limited options.

These factors have contributed to the current distribution of fishing effort, harvest patterns, dockside prices, closure patterns, and potentially variable year-to-year financial success of individual businesses and the commercial king mackerel fleet as a whole. Changing the fishing year in the northern subzone would be expected to alter these patterns, improving the economic situation for some fishermen, but worsening the situation for others. Identifying the entities that would be expected to financially gain, lose, or not be affected as a result of changing the fishing year, as well as quantifying the respective changes, is not possible because of the complexity of the situation, the wide range of potential outcomes, and the absence of definitive information on how fishermen may change their fishing patterns. However, supporting comments provided by the industry during the amendment development process suggest the proposed change would be economically beneficial because it would allow dually permitted vessels (vessels that possess a commercial permit and a charter/headboat permit) to commercially harvest king mackerel during a period when charter activity typically declines. This commercial activity by these vessels could not occur in the absence of this proposed action because the quota has normally already been harvested by October.

The third action would allow vessels with king mackerel legally harvested in open areas of the EEZ to travel through areas closed to king mackerel fishing if the transit is continuous and fishing gear is stowed. This proposed action would be expected to result in an unquantifiable increase in economic benefits to commercial fishermen by allowing greater flexibility in port selection and a reduction in travel costs.

Although separate actions, the fourth and fifth actions are similar because they would establish northern and southern zones for Atlantic migratory group king mackerel and Atlantic migratory group Spanish mackerel, establish quotas for each zone, and allow transfer of quota between zones. The proposed action for Atlantic migratory group king mackerel would not be expected to have a significant adverse economic effect on commercial fishing businesses. The proposed northern zone quota, 1,292,988 lb (586,489 kg), would be higher than the average landings in this zone during the 3 most recent fishing years for which final data are available, 2009–2010 through 2011–2012, by approximately 790,000 lb (358,338 kg). As a result, if the proposed northern zone quota is harvested, commercial fishermen in this zone who harvest king mackerel would be expected to increase their vessel revenue by approximately $6,300 (2011 dollars) per vessel (270 vessels), or approximately 17.9 percent of the average annual gross revenue per vessel (approximately $35,100 for vessels operating in either the northern or southern zone; average annual revenue estimates per zone are not available). For the southern zone, the proposed quota, 2,587,012 lb (1,173,449 kg), would be approximately 83,000 lb (37,648 kg) higher than the average landings for the three most recent fishing years. As a result, if the quota in the southern zone is harvested, the commercial fishermen who harvest king mackerel in this zone would be expected to increase their vessel revenue by approximately $211 (2011 dollars) per vessel (846 vessels), or

approximately 0.6 percent of the average annual gross revenue per vessel.

The total Atlantic migratory group king mackerel quota, 3.71 million lb (1.68 million kg), has not been harvested since before the 2002–2003 fishing year. However, and the average amount of unharvested quota per fishing year during this period has been approximately 29 percent of the quota. This circumstance drives the outcome, as described in the previous paragraph, that fishermen in both zones can experience an increase in revenue under the proposed quotas if the quotas are harvested, rather than fishermen in one zone gaining at the expense of fishermen in the other zone. However, because this result depends on the quota being completely harvested, which would be an anomaly, the full projected increases in revenue may not occur. Further, for the southern zone, although an increase in revenue is forecast based on the average harvest for the most recent three fishing years (and would increase to approximately $2,000 per vessel, or approximately 6 percent of the average annual revenue if compared to average annual harvest from the 2002–2003 through 2011–2012 fishing years, which represent the most recent 9 fishing years for which final data are available), harvest in the 2009–2010 (approximately 2.776 million lb (1.259 million kg)) and 2010–2011 (approximately 3.113 million lb (1.412 million kg)) fishing years exceeded the proposed quota for the southern zone. The net increase in revenue relative to the three-year period previously discussed (2009–2010 through 2011–2012) is an artifact of the decline in harvest in the 2011–2012 fishing year (to approximately 1.623 million lb (0.736 million kg)). The king mackerel harvest in 2011–2012 was more similar to the average harvest over the 2002–2003 through 2011–2012 fishing years, approximately 1.787 million lb (0.811 million kg). As a result, the proposed southern zone king mackerel quota may result in a decline in revenue for some fishermen if fishing conditions in coming years more closely mirror those of 2009–2010 or 2010–2011 than either the most recent 3-year average, the longer 9-year average, or other fishing years when lower harvests occurred. Compared to the average harvest of the 2009–2010 and 2010–2011 fishing years, the proposed southern zone king mackerel quota would be expected to reduce the revenue per commercial vessel by approximately $900 per vessel, or approximately 2.6 percent of the average annual gross revenue per vessel.

For Atlantic migratory group Spanish mackerel, the proposed northern and southern zone quotas would be expected to have minor to no economic effects on the revenue of commercial vessels. The proposed quotas equal the average distribution of Spanish mackerel harvest across the northern and southern zones over the 2002–2003 through 2011–2012 fishing years. As a result, if harvest patterns in future years are consistent with the prior average harvest, no economic effects would be expected to occur. If future Spanish mackerel harvests without the proposed zone quotas follow the more recent 2009–2010 through 2011–2012 harvest patterns, then the proposed northern zone quota would be expected to result in a minor reduction in revenue per vessel (300 vessels), of approximately $173 (2011 dollars), or approximately 0.6 percent of the average annual gross revenue per vessel ($31,000 for vessels operating in either the northern or southern zone; average annual revenue estimates per zone are not available). For vessels in the southern zone, the proposed quota would be expected to result in a minor increase in average revenue per vessel (1,251 vessels), of approximately $41, or approximately 0.1 percent of the average annual gross revenue per vessel.

The sixth action would expand the range of actions that could be modified through a streamlined framework procedure instead of the plan amendment process. This proposed action would also designate Council responsibility for setting regulations for the migratory groups of each species. Collectively, these changes would be expected to allow regulatory changes to occur in a more timely and efficient manner. Although future regulatory changes may have direct adverse economic consequences, this proposed action would not make any regulatory changes but would, rather, simply change the administrative environment to allow these changes to be made in the future. As a result, this action would not be expected to have any direct economic effect on any small entities.

The seventh action would modify the Gulf and Atlantic migratory group cobia ACLs and ACTs. For the commercial sector, the proposed changes would be expected to increase the total ex-vessel revenue received by all vessels in the Atlantic zone by approximately $31,000 (2011 dollars), reduce total ex-vessel revenue by approximately $56,000 (2011 dollars) across all commercial vessels in the Florida east coast zone, and not have any effect on the ex-vessel revenue for vessels in the Gulf. For the Atlantic and Florida east coast zones, the net reduction in ex-vessel revenue for all vessels is expected to be approximately $25,000. The total expected reduction in ex-vessel revenue would equate to approximately $58 per vessel (432 vessels), or approximately 0.1 percent of the average annual gross revenue for these vessels ($41,600; 2011 dollars). For the recreational sector, the proposed changes would be expected to increase the total net operating revenue (NOR; NOR equals revenue minus non-labor operating expenses) received by all for-hire vessels in the Florida east coast zone by approximately $118,000 (2011 dollars), reduce the total NOR received by all for-hire vessels in the Atlantic zone by approximately $3,000 (2011 dollars), and not have any direct economic effect on for-hire vessels in the Gulf. The net expected increase in NOR for the for-hire vessels in the Atlantic and Florida east coast zones would be approximately $115,000 (2011 dollars), spread across all vessels. This increase is expected to all accrue to charterboats. Additional increases in NOR may accrue to headboats that operate in the Atlantic. However, the estimated changes in NOR are calculated based on expected increases in fishermen target trips, and target information is not collected from headboat fishermen. As a result, an estimate of the expected increase in NOR to Atlantic headboats is not available. The expected increase in NOR to charterboats would equate to approximately $80 per vessel (1,400 vessels), or a minor increase relative to average annual revenue ($111,000). The proposed changes in the ACLs and ACTs would not be expected to have any direct economic effect on any small entities in the Gulf because, although the new harvest limits would be higher than current limits, fishermen in the Gulf have not harvested the current lower harvest limit. As a result, the proposed changes for the Gulf migratory group would not be expected to result in increased harvest or associated revenue in the near term. However, the proposed changes in the ACLs and ACTs for the Gulf migratory group would allow an increase in ex-vessel revenue and profit to small business fishing entities in the Gulf if fishing behavior and harvest patterns change.

Finally, this rule proposes two administrative changes. First, this rule proposes to reorganize the description of CMP zones in the regulations so they are easier for the public to find and understand. Second, this rule proposes to clarify that spearguns and powerheads are allowable gear for cobia in Federal waters of the South Atlantic

and Mid-Atlantic regions. Because these are administrative changes, neither change would be expected to have any direct economic effect on any small business entities.

In summary, most of the actions in this proposed rule, if implemented, would be expected to either have no direct economic effect on any small business entities or result in an increase in economic benefits. The two proposed actions that would be expected to adversely impact small entities would only be expected to result in minor reductions in revenue. As a result, this proposed rule, if implemented, would not be expected to have a significant economic effect on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 622

Atlantic, Coastal Migratory Pelagic Resources, Cobia, Fisheries, Fishing, Gulf, King mackerel, Spanish mackerel.

Dated: October 24, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.2, the definition of migratory group is revised to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Migratory group, for king mackerel, Spanish mackerel, and cobia, means a group of fish that may or may not be a separate genetic stock, but that is treated as a separate stock for management purposes. King mackerel, Spanish mackerel, and cobia are divided into migratory groups—the boundaries between these groups are specified in § 622.369.

* * * * *

■ 3. In § 622.7, paragraph (b)(1) is revised to read as follows:

§ 622.7 Fishing years.

* * * * *

(b) * * *

(1) *Gulf migratory group king mackerel*—(i) *Eastern Zone*—July 1 through June 30, except the northern subzone of the Florida west coast subzone, which has a fishing year of October 1 through September 30.

(ii) *Western Zone*—July 1 through June 30.

* * * * *

■ 4. Add § 622.369 to subpart Q to read as follows:

§ 622.369 Description of zones and subzones.

(a) *Migratory groups of king mackerel.* In the EEZ, king mackerel are divided into the Gulf migratory group and the Atlantic migratory group. The Gulf migratory group is bound by a line extending east of the U.S./Mexico border and the summer/winter jurisdictional boundary. The Atlantic migratory group is bound by the summer/winter jurisdictional boundary and a line from the intersection point of Connecticut, Rhode Island, and New York (as described in § 600.105(a) of this chapter). From April 1 through October 31, the summer jurisdictional boundary separates the Gulf and Atlantic migratory groups of king mackerel by a line extending due west from the Monroe/Collier County, FL, boundary. From November 1 through March 31, the winter jurisdictional boundary separates the Gulf and Atlantic migratory groups of king mackerel by a line extending due east from the Volusia/Flagler County, FL, boundary. See Table 1 of this section for the boundary coordinates. See Figures 1 and 2 in Appendix G of this part for illustration.

(1) *Gulf migratory group.* The Gulf migratory group is divided into western and eastern zones separated by a line extending due south from the Alabama/Florida border. See Table 1 of this section for the boundary coordinates. See Figures 1 and 2 in Appendix G of this part for illustration.

(i) *Western zone.* The western zone encompasses an area of the EEZ north of a line extending east of the US/Mexico border, and west of a line extending due south of the Alabama/Florida border, including the EEZ off Texas, Louisiana, Mississippi, and Alabama. This zone remains the same year round.

(ii) *Eastern zone.* The eastern zone is divided into the Florida west coast subzone and the Florida east coast subzone.

(A) *Florida west coast subzone.* The Florida west coast subzone is further divided into the northern and southern subzones by a line extending due west from the Lee/Collier County, FL, boundary.

(*1*) *Northern subzone.* The northern subzone encompasses an area of the EEZ east of a line extending due south of the Florida/Alabama border, and north of a line extending due west of the Lee/Collier County, FL, boundary, and remains the same area year round.

(*2*) *Southern subzone.* From November 1 through March 31, the southern subzone encompasses an area of the EEZ south of a line extending due west of the Lee/Collier County, FL, boundary on the Florida west coast, and south of a line extending due east of the Monroe/Miami-Dade County, FL, boundary on the Florida east coast, which includes the EEZ off Collier and Monroe Counties, FL. From April 1 through October 31, the southern subzone is reduced to the EEZ off Collier County, and the EEZ off Monroe County becomes part of the Atlantic migratory group area.

(B) *Florida east coast subzone.* From November 1 through March 31, the Florida east coast subzone encompasses an area of the EEZ south of a line extending due east of the Flagler/Volusia County, FL, boundary, and north of a line extending due east of the Miami-Dade/Monroe County, FL, boundary. From April 1 through October 31, the Florida east coast subzone is not part of the Gulf migratory group king mackerel area; it is part of the Atlantic migratory group king mackerel area.

(2) *Atlantic migratory group.* The Atlantic migratory group is divided into the northern and southern zones separated by a line extending from the North Carolina/South Carolina border, as specified in § 622.2. See Table 1 of this section for the boundary coordinates. See Figures 1 and 2 in Appendix G of this part for illustration. See § 622.385(a)(1) for a description of the areas for Atlantic migratory group king mackerel commercial trip limits.

(i) *Northern zone.* The northern zone encompasses an area of the EEZ south of a line extending from the intersection point of New York, Connecticut, and Rhode Island (as described in § 600.105(a) of this chapter), and north of a line extending from the North Carolina/South Carolina border, as specified in § 622.2, including the EEZ off each state from North Carolina to New York. This zone remains the same year round.

(ii) *Southern zone.* From April 1 through October 31, the southern zone encompasses an area of the EEZ south of a line extending from the North Carolina/South Carolina border, as specified in § 622.2, and south of a line extending due west of the Lee/Collier County, FL, boundary. From November 1 through March 31, the southern zone encompasses an area of the EEZ south

of a line extending from the North Carolina/South Carolina border, as specified in § 622.2, and north of a line extending due east of the Flagler/Volusia County, FL, boundary.

TABLE 1 TO § 622.369—KING MACKEREL DESCRIPTION OF ZONES

[For illustration, see Figures 1 and 2 in Appendix G of this part]

Area	Boundary 1	Boundary 2	
		Summer	Winter
Gulf Migratory Group—Western Zone	U.S./Mexico A line east of the intersection of 25°58′30.57″ N lat. and 96°55′27.37″ W long.	AL/FL 87°31′6″ W long.	
Gulf Migratory Group—Eastern Zone: Florida West Coast Northern Subzone.	AL/FL 87°31′6″ W long	Lee/Collier, 26°19′48″ N lat.	
Gulf Migratory Group—Eastern Zone: Florida West Coast Southern Subzone.	Lee/Collier 26°19′48″ N lat	Collier/Monroe 25°48′ N lat.	Monroe/Miami-Dade, 25°20′24″ N lat.
Gulf Migratory Group—Eastern Zone: Florida East Coast Subzone.	Monroe/Miami-Dade 25°20′24″ N lat	NA	Volusia/Flagler, 29°25′ N lat.
Atlantic Migratory Group—Northern Zone	NY/CT/RI, 41°18′16.249″ N lat. and 71°54′28.477″ W long. southeast to 37°22′32.75″ N lat. and the intersection point with the outward boundary of the EEZ.	NC/SC, a line extending in a direction of 135°34′55″ from true north beginning at 33°51′07.9″ N lat. and 78°32′32.6″ W long. to the intersection point with the outward boundary of the EEZ.	
Atlantic Migratory Group—Southern Zone	NC/SC, a line extending in a direction of 135°34′55″ from true north beginning at 33°51′07.9″ N lat. and 78°32′32.6″ W long. to the intersection point with the outward boundary of the EEZ.	Collier/Monroe, 25°48′ N lat.	Volusia/Flagler, 29°25′ N lat.

(b) *Migratory groups of Spanish mackerel*—(1) *Gulf migratory group.* In the EEZ, the Gulf migratory group is bounded by a line extending east of the US/Mexico border and a line extending due east of the Monroe/Miami-Dade County, FL, boundary. See Table 2 of this section for the boundary coordinates. See Figure 3 in Appendix G of this part for illustration.

(2) *Atlantic migratory group.* In the EEZ, the Atlantic migratory group is bounded by a line extending due east of the Monroe/Miami-Dade County, FL, boundary and a line extending from the intersection point of New York, Connecticut, and Rhode Island (as described in § 600.105(a) of this chapter). The Atlantic migratory group is divided into the northern and southern zones. See Table 2 of this section for the boundary coordinates. See Figure 3 in Appendix G of this part for illustration. See § 622.385(b)(1) for a description of the areas for Atlantic migratory group Spanish mackerel commercial trip limits.

(i) *Northern zone.* The northern zone encompasses an area of the EEZ south of a line extending from the intersection point of New York, Connecticut, and Rhode Island (as described in § 600.105(a) of this chapter), and north of a line extending from the North Carolina/South Carolina border, as specified in § 622.2, including the EEZ off each state from North Carolina to New York.

(ii) *Southern zone.* The southern zone encompasses an area of the EEZ south of a line extending from the North Carolina/South Carolina border, as specified in § 622.2, and north of a line extending due east of the Monroe/Miami-Dade County, FL, boundary, including the EEZ off South Carolina, Georgia, and Florida.

TABLE 2 TO § 622.369—SPANISH MACKEREL DESCRIPTION OF ZONES

[For illustration, see Figure 3 in Appendix G of this part]

Area	Boundary 1	Boundary 2
Gulf Migratory Group	US/Mexico A line east of the intersection of 25°58′30.57″ N lat. and 96°55′27.37″ W long.	Monroe/Miami-Dade 25°20′24″ N lat.
Atlantic Migratory Group—Northern Zone	NY/CT/RI, 41°18′16.249″ N lat. and 71°54′28.477″ W long. southeast to 37°22′32.75″ N lat. and the intersection point with the outward boundary of the EEZ.	NC/SC, a line extending in a direction of 135°34′55″ from true north beginning at 33°51′07.9″ N lat. and 78°32′32.6″ W long. to the intersection point with the outward boundary of the EEZ.
Atlantic Migratory Group—Southern Zone	NC/SC, a line extending in a direction of 135°34′55″ from true north beginning at 33°51′07.9″ N lat. and 78°32′32.6″ W long. to the intersection point with the outward boundary of the EEZ.	Monroe/Miami-Dade 25°20′24″ N lat.

(c) *Migratory groups of cobia*—(1) *Gulf migratory group.* In the EEZ, the Gulf migratory group is bounded by a line extending east from the U.S./Mexico border and a line extending due east from the Florida/Georgia border. See Table 3 of this section for the boundary coordinates. (See Figure 4 in Appendix G of this part for illustration.)

(i) *Gulf zone.* The Gulf zone encompasses an area of the EEZ north of a line extending east of the U.S./Mexico border, and north and west of the line of demarcation between the Atlantic Ocean and the Gulf of Mexico (the Council boundary, as described in § 600.105(c) of this chapter).

(ii) *Florida east coast zone.* The Florida east coast zone encompasses an area of the EEZ south and east of the line of demarcation between the Atlantic Ocean and the Gulf of Mexico (as described in § 600.105(c) of this chapter), and south of a line extending due east from the Florida/Georgia border.

(2) *Atlantic migratory group.* In the EEZ, the Atlantic migratory group is bounded by a line extending from the intersection point of New York, Connecticut, and Rhode Island (as described in § 600.105(a) of this chapter) and a line extending due east of the Florida/Georgia border. See Table 3 of this section for the boundary coordinates.

TABLE 3 TO § 622.369—COBIA DESCRIPTION OF ZONES

[For illustration, see Figure 4 in Appendix G of this part]

Area	Boundary 1	Boundary 2
Gulf Migratory Group—Gulf Zone	US/Mexico—A line east of the intersection of 25°58′30.57″ N lat. and 96°55′27.37″ W long.	Council Boundary—the intersection of the outer boundary of the EEZ and 83°00′ W long., north to 24°35′ N lat., (near the Dry Tortugas Islands), then east to the mainland.
Gulf Migratory Group—Florida East Coast Zone.	Council Boundary—the intersection of the outer boundary of the EEZ and 83°00′ W long., north to 24°35′ N lat., (near the Dry Tortugas Islands), then east to the mainland.	FL/GA, 30°42′45.6″ N lat.
Atlantic Migratory Group	NY/CT/RI, 41°18′16.249″ N lat. and 71°54′28.477″ W long. southeast to 37°22′32.75″ N lat. and the intersection point with the outward boundary of the EEZ.	FL/GA, 30°42′45.6″ N lat.

■ 5. In § 622.375, paragraph (a) is revised to read as follows:

§ 622.375 Authorized and unauthorized gear.

(a) *Authorized gear*—(1) *King and Spanish mackerel.* Subject to the prohibitions on gear/methods specified in § 622.9, the following are the only fishing gears that may be used in the Gulf, Mid-Atlantic, and South Atlantic EEZ in directed fisheries for king and Spanish mackerel:

(i) *King mackerel, Atlantic migratory group*—

(A) North of 34°37.3′ N. lat., the latitude of Cape Lookout Light, NC—all gear except drift gillnet and long gillnet.

(B) South of 34°37.3′ N. lat.—automatic reel, bandit gear, handline, and rod and reel.

(ii) *King mackerel, Gulf migratory group*—hook-and-line gear and, in the southern Florida west coast subzone only, run-around gillnet. (See § 622.369(a)(1)(ii)(A)(2) for a description of the Florida west coast southern subzone.)

(iii) *Spanish mackerel, Atlantic migratory group*—automatic reel, bandit gear, handline, rod and reel, cast net, run-around gillnet, and stab net.

(iv) *Spanish mackerel, Gulf migratory group*—all gear except drift gillnet, long gillnet, and purse seine.

(2) *Cobia.* Subject to the prohibitions on gear/methods specified in § 622.9, the following are the only fishing gears that may be used in the Gulf, Mid-Atlantic, and South Atlantic EEZ for cobia.

(i) *Cobia in the Mid-Atlantic and South Atlantic EEZ*—automatic reel, bandit gear, handline, rod and reel, pelagic longline, and spear (including powerheads).

(ii) *Cobia in the Gulf EEZ*—all gear except drift gillnet and long gillnet.

* * * * *

■ 6. Section 622.378 is revised to read as follows:

§ 622.378 Area and seasonal closures.

(a) *Seasonal closures of the gillnet component for Gulf migratory group king mackerel.* The gillnet component for Gulf group king mackerel in or from the Florida west coast southern subzone is closed each fishing year from July 1 until 6 a.m. on the day after the Martin Luther King Jr. Federal holiday. The gillnet component is open on the first weekend following the Martin Luther King Jr. holiday, provided a notification of closure has not been filed under § 622.8(b). The gillnet component is closed all subsequent weekends and observed Federal holidays. Weekend closures are effective from 6 a.m. Saturday to 6 a.m. Monday. Holiday closures are effective from 6 a.m. on the observed Federal holiday to 6 a.m. the following day. All times are eastern standard time. During these closures, a person aboard a vessel using or possessing a gillnet with a stretched-mesh size of 4.75 inches (12.1 cm) or larger in the southern Florida west coast subzone may not fish for or possess Gulf migratory group king mackerel. (See § 622.369(a)(1)(ii)(A)(*2*) for a description of the Florida west coast southern subzone.)

(b) [Reserved]

■ 7. In § 622.384, the introductory text, and paragraphs (a), (b), (c), and (d) are revised to read as follows:

§ 622.384 Quotas.

See § 622.8 for general provisions regarding quota applicability and closure and reopening procedures. See § 622.369 for the descriptions of the zones. This section provides quotas and specific quota closure restrictions for coastal migratory pelagic fish. All weights are in round and eviscerated weight combined, unless specified otherwise.

(a) King and Spanish mackerel quotas apply to persons who fish under commercial vessel permits for king or Spanish mackerel, as required under § 622.370(a)(1) or (3). A fish is counted against the quota for the area where it is caught, not where it is landed.

(b) *King mackerel*—(1) *Gulf migratory group.* The Gulf migratory group is divided into zones and subzones. The descriptions of the zones and subzones are specified in § 622.369(a). Quotas for

the eastern and western zones are as follows:

(i) *Eastern zone.* The eastern zone is divided into subzones with quotas as follows:

(A) *Florida east coast subzone*—1,102,896 lb (500,265 kg).

(B) *Florida west coast subzone*—(*1*) *Southern subzone.* The hook-and-line quota is 551,448 lb (250,133 kg) and the run-around gillnet quota is 551,448 lb (250,133 kg).

(*2*) *Northern subzone*—178,848 lb (81,124 kg).

(ii) *Western zone*—1,071,360 lb (485,961 kg).

(2) *Atlantic migratory group.* The Atlantic migratory group is divided into northern and southern zones. The descriptions of the zones are specified in § 622.369(a). Quotas for the northern and southern zones for the 2015–2016 fishing year and subsequent years are as follows:

(i) *Northern zone*—1,292,040 lb (586,059 kg). No more than 0.40 million lb (0.18 million kg) may be harvested by purse seines.

(ii) *Southern zone*—2,587,960 lb (1,173,879 kg).

(iii) *Quota transfers.* North Carolina or Florida, in consultation with the other states in their respective zones, may request approval from the RA to transfer part or all of their respective zone's annual commercial quota to the other zone. Requests for transfer of commercial quota for king mackerel must be made by a letter signed by the principal state official with marine fishery management responsibility and expertise of the state requesting the transfer, or his/her previously named designee. The letter must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred. For the purposes of quota closures as described in § 622.8, the receiving zone's quota will be the original quota plus any transferred amount, for that fishing season only. Landings associated with any transferred quota will be included in the total landings for the Atlantic migratory group, which will be evaluated relative to the total ACL.

(A) Within 10 working days following the receipt of the letter from the state requesting the transfer, the RA shall notify the appropriate state officials of the disposition of the request. In evaluating requests to transfer a quota, the RA shall consider whether:

(*1*) The transfer would allow the overall annual quota to be fully harvested; and

(*2*) The transfer is consistent with the objectives of the FMP and the Magnuson-Stevens Act.

(B) The transfer of quota will be valid only for the fishing year for which the request was made and does not permanently alter the quotas specified in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(3) *Transit provisions applicable in areas closed due to a quota closure for king mackerel.* A vessel with a valid commercial vessel permit for king mackerel that has onboard king mackerel harvested in an open area of the EEZ may transit through areas closed to the harvest of king mackerel due to a quota closure, if fishing gear is appropriately stowed. For the purpose of paragraph (b) of this section, transit means direct and non-stop continuous course through the area. To be appropriately stowed fishing gear means—

(i) A gillnet must be left on the drum. Any additional gillnets not attached to the drum must be stowed below deck.

(ii) A rod and reel must be removed from the rod holder and stowed securely on or below deck. Terminal gear (*i.e.,* hook, leader, sinker, flasher, or bait) must be disconnected and stowed separately from the rod and reel. Sinkers must be disconnected from the down rigger and stowed separately.

(c) *Spanish mackerel*—(1) *Gulf migratory group.* [Reserved]

(2) *Atlantic migratory group.* The Atlantic migratory group is divided into northern and southern zones. The descriptions of the zones are specified in § 622.369(b). The quota for the Atlantic migratory group of Spanish mackerel is 3,130,000 lb (1,419,744 kg). Quotas for the northern and southern zones are as follows:

(i) *Northern zone*—622,870 lb (282,529 kg).

(ii) *Southern zone*—2,507,130 lb (1,137,215 kg).

(iii) *Quota transfers.* North Carolina or Florida, in consultation with the other states in their respective zones, may request approval from the RA to transfer part or all of their respective zone's annual commercial quota to the other zone. Requests for transfer of commercial quota for Spanish mackerel must be made by a letter signed by the principal state official with marine fishery management responsibility and expertise, or his/her previously named designee, for each state involved. The letter must certify that all pertinent state requirements have been met and identify the states involved and the amount of quota to be transferred. For the purposes of quota closures as described in § 622.8, the receiving zone's quota will be the original quota plus any transferred amount, for that fishing season only. Landings associated with any transferred quota will be included in the total landings for the Atlantic migratory group, which will be evaluated relative to the total ACL.

(A) Within 10 working days following the receipt of the letter from the states involved, the RA shall notify the appropriate state officials of the disposition of the request. In evaluating requests to transfer a quota, the RA shall consider whether:

(*1*) The transfer would allow the overall annual quota to be fully harvested; and

(*2*) The transfer is consistent with the objectives of the FMP and the Magnuson-Stevens Act.

(B) The transfer of quota will be valid only for the fishing year for which the request was made and does not permanently alter any zone's quota specified in paragraph (c)(2)(i) or (c)(2)(ii) of this section.

(d) *Cobia*—(1) *Gulf migratory group*—(i) *Gulf zone.* For the 2014 fishing year, the stock quota for the Gulf migratory group of cobia in the Gulf zone is 1,420,000 lb (644,101 kg). For the 2015 fishing year, the stock quota is 1,450,000 lb (657,709 kg). For the 2016 fishing year and subsequent fishing years, the stock quota is 1,500,000 lb (680,389 kg).

(ii) *Florida east coast zone.* The following quota applies to persons who fish for cobia and sell their catch. The quota for the Gulf migratory group of cobia in the Florida east coast zone is 70,000 lb (31,751 kg).

(2) *Atlantic migratory group.* The following quotas apply to persons who fish for cobia and sell their catch. For the 2014 and 2015 fishing years, the quota for the Atlantic migratory group of cobia is 60,000 lb (27,216 kg). The quota for the 2016 fishing year and subsequent fishing years is 50,000 lb (22,680 kg).

* * * * *

■ 8. In § 622.385, the heading for paragraph (a)(1), the heading for paragraph (a)(2), the second sentence in paragraph (a)(2), and paragraph (a)(2)(ii)(B) are revised; paragraph (a)(2)(iii) is removed; paragraph (a)(2)(iv) is redesignated as paragraph (a)(2)(iii) and revised; and a heading is added to paragraph (b)(1) to read as follows:

§ 622.385 Commercial trip limits.

* * * * *

(a) * * *

(1) *Atlantic migratory group.* * * *

(2) *Gulf migratory group.* * * * (See § 622.369(a)(2) for descriptions of the eastern and western zones and § 622.369(a)(2)(ii) for descriptions of the subzones in the eastern zone.)

* * * * *

(ii) * * *

(B) *Hook-and-line gear.* In the Florida west coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel with a commercial permit for king mackerel, as required by § 622.370(a)(1), and operating under the hook-and-line gear quotas in § 622.384(b)(1)(i)(B)(*1*) or (b)(1)(i)(B)(*2*):

(*1*) *Northern subzone.* From October 1, each fishing year, until the northern subzone's hook-and-line gear quota has been harvested—in amounts not exceeding 1,250 lb (567 kg) per day.

(*2*) *Southern subzone.* From July 1, each fishing year, until the southern subzone's hook-and-line gear quota has been harvested—in amounts not exceeding 1,250 lb (567 kg) per day.

(iii) *Western zone.* In the western zone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit for king mackerel has been issued, as required under § 622.370(a)(1), from July 1, each fishing year, until a closure of the western zone has been effected under § 622.8(b)—in amounts not exceeding 3,000 lb (1,361 kg) per day.

(b) * * *

(1) *Atlantic migratory group.* * * *

* * * * *

■ 9. In § 622.388, paragraphs (a)(1), (a)(3), (b)(1), (d)(1), (e), and (f) are revised to read as follows:

§ 622.388 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

(a) *Gulf migratory group king mackerel*—(1) *Commercial sector*—(i) If commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.384(b)(1), the AA will file a notification with the Office of the Federal Register to close the commercial sector for that zone, subzone, or gear type for the remainder of the fishing year.

(ii) The commercial ACL for the Gulf migratory group of king mackerel is 3.456 million lb (1.568 million kg). This ACL is further divided into a commercial ACL for vessels fishing with hook-and-line and a commercial ACL for vessels fishing with run-around gillnets. The hook-and-line ACL (which applies to the entire Gulf) is 2,904,552 lb (1,317,483 kg) and the run-around gillnet ACL (which applies to the Gulf eastern zone Florida west coast southern subzone) is 551,448 lb (250,133 kg).

* * * * *

(3) For purposes of tracking the ACL, recreational landings will be monitored based on the commercial fishing year.

* * * * *

(b) *Atlantic migratory group king mackerel*—(1) *Commercial sector*—(i) If commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.384(b)(2), the AA will file a notification with the Office of the Federal Register to close the commercial sector for that zone for the remainder of the fishing year.

(ii) In addition to the measures specified in paragraph (b)(1)(i) of this section, if the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (b)(3) of this section, and Atlantic migratory group king mackerel are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the commercial quota for that zone for that following year by the amount of any commercial sector overage in the prior fishing year for that zone.

(iii) The commercial ACL for the Atlantic migratory group of king mackerel is 3.88 million lb (1.76 million kg).

* * * * *

(d) *Atlantic migratory group Spanish mackerel*—(1) *Commercial sector.* (i) If commercial landings, as estimated by the SRD, reach or are projected to reach the applicable quota specified in § 622.384(c)(2), the AA will file a notification with the Office of the Federal Register to close the commercial sector for that zone for the remainder of the fishing year.

(ii) In addition to the measures specified in paragraph (d)(1)(i) of this section, if the sum of the commercial and recreational landings, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (d)(3) of this section, and Atlantic migratory group Spanish mackerel are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the commercial quota for that zone for that following year by the amount of any commercial sector overage in the prior fishing year for that zone.

(iii) The commercial ACL for the Atlantic migratory group Spanish mackerel is 3.13 million lb (1.42 million kg).

* * * * *

(e) *Gulf migratory group cobia*—(1) *Gulf zone.* (i) If the sum of all cobia landings, as estimated by the SRD, reaches or is projected to reach the stock quota (stock ACT), specified in § 622.384(d)(1), the AA will file a notification with the Office of the Federal Register to prohibit the harvest of Gulf migratory group cobia in the Gulf zone for the remainder of the fishing year. On and after the effective date of such a notification, all sale and purchase of Gulf migratory group cobia in the Gulf zone is prohibited and the possession limit of this species in or from the Gulf EEZ is zero. This possession limit also applies in the Gulf on board a vessel for which a valid Federal charter vessel/headboat permit for coastal migratory pelagic fish has been issued, without regard to where such species were harvested, *i.e.* in state or Federal water.

(ii) The stock ACLs for Gulf migratory group cobia in the Gulf zone are 1,570,000 lb (712,140 kg) for 2014, 1,610,000 lb (730,284 kg) for 2015, and 1,660,000 lb (752,963 kg) for 2016 and subsequent fishing years.

(2) *Florida east coast zone*—(i) *The following ACLs and AMs apply to cobia that are sold.* (A) If the sum of cobia landings that are sold, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.384(d)(1)(ii) (ACL), the AA will file a notification with the Office of the Federal Register to prohibit the sale and purchase of cobia in or from the Florida east coast zone for the remainder of the fishing year.

(B) In addition to the measures specified in paragraph (e)(2)(i)(A) of this section, if the sum of cobia landings that are sold and not sold in or from the Florida east coast zone, as estimated by the SRD, exceeds the stock ACL for the Florida east coast zone, as specified in paragraph (e)(2)(iii) of this section, and Gulf migratory group cobia are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the quota (ACL) for the Florida east coast zone cobia that are sold for that following year by the amount of any overage in the prior fishing year.

(ii) *The following ACLs and AMs apply to cobia that are not sold.* (A) If the sum of cobia landings that are sold and not sold, as estimated by the SRD, exceeds the stock ACL, as specified in

paragraph (e)(2)(iii) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the length of the following fishing season by the amount necessary to ensure landings may achieve the applicable ACT, but do not exceed the applicable ACL in the following fishing year. Further, during that following year, if necessary, the AA may file additional notification with the Office of the Federal Register to readjust the reduced fishing season to ensure harvest achieves the ACT but does not exceed the ACL. The applicable ACTs for the Florida east coast zone of cobia are 670,000 lb (303,907 kg) for 2014, 680,000 lb (308,443 kg) for 2015, and 710,000 lb (322,051 kg) for 2016 and subsequent fishing years. The applicable ACLs for the Florida east coast zone of cobia are 810,000 lb (367,410 kg) for 2014, 830,000 lb (376,482 kg) for 2015, and 860,000 lb (390,089 kg) for 2016 and subsequent fishing years.

(B) In addition to the measures specified in paragraph (e)(2)(ii)(A) of this section, if the sum of the cobia landings that are sold and not sold in or from the Florida east coast zone, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (e)(2)(iii) of this section, and Gulf migratory group cobia are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the applicable ACL and applicable ACT for the Florida east coast zone for that following year by the amount of any ACL overage in the prior fishing year.

(C) Landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(iii) The stock ACLs for Florida east coast zone cobia are 880,000 lb (399,161 kg) for 2014, 900,000 lb (408,233 kg) for 2015, and 930,000 lb (421,841 kg) for 2016 and subsequent fishing years.

(f) *Atlantic migratory group cobia*—(1) The following ACLs and AMs apply to cobia that are sold—

(i) If the sum of the cobia landings that are sold, as estimated by the SRD, reach or are projected to reach the quota specified in § 622.384(d)(2) (ACL), the AA will file a notification with the Office of the Federal Register to prohibit the sale and purchase of cobia for the remainder of the fishing year.

(ii) In addition to the measures specified in paragraph (f)(1)(i) of this section, if the sum of the cobia landings that are sold and not sold in or from the Atlantic migratory group, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (f)(3) of this section, and Atlantic migratory group cobia are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the applicable quota (ACL), as specified in paragraph (f)(1)(i) of this section, for that following year by the amount of any applicable sector-specific ACL overage in the prior fishing year.

(2) The following ACLs and AMs apply to cobia that are not sold.

(i) If the sum of the cobia landings that are sold and not sold, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (f)(3) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the length of the following fishing season by the amount necessary to ensure landings may achieve the applicable ACT, but do not exceed the applicable ACL in the following fishing year. Further, during that following year, if necessary, the AA may file additional notification with the Office of the Federal Register to readjust the reduced fishing season to ensure harvest achieves the ACT but does not exceed the ACL. The applicable ACTs for the Atlantic migratory group of cobia are 550,000 lb (249,476 kg) for 2014, 520,000 lb (235,868 kg) for 2015, and 500,000 lb (226,796 kg) for 2016 and subsequent fishing years. The applicable ACLs for the Atlantic migratory group of cobia are 670,000 lb (303,907 kg) for 2014, 630,000 lb (285,763 kg) for 2015, and 620,000 lb (281,227 kg) for 2016 and subsequent fishing years.

(ii) In addition to the measures specified in paragraph (f)(2)(i) of this section, if the sum of cobia landings that are sold and not sold, as estimated by the SRD, exceeds the stock ACL, as specified in paragraph (f)(3) of this section, and Atlantic migratory group cobia are overfished, based on the most recent status of U.S. Fisheries Report to Congress, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the applicable ACL and ACT, as specified in paragraph (f)(2)(i) of this section, for that following year by the amount of any applicable sector-specific overage in the prior fishing year.

(iii) Landings will be evaluated relative to the ACL based on a moving multi-year average of landings, as described in the FMP.

(3) The stock ACLs for Atlantic migratory group cobia are 730,000 lb (331,122 kg) for 2014, 690,000 lb (312,979 kg) for 2015, and 670,000 lb (303,907 kg) for 2016 and subsequent fishing years.

■ 10. Section 622.389 is revised to read as follows:

§ 622.389 Adjustment of management measures.

In accordance with the framework procedures of the FMP for Coastal Migratory Pelagic Resources, the RA may establish or modify, and the applicable council is required to approve, the following items specified in paragraph (a) of this section for coastal migratory pelagic fish. (**Note:** The applicable council refers to the council whose jurisdiction applies to the management measures.)

(a) For a species or species group: Reporting and monitoring requirements, permitting requirements, bag and possession limits (including a bag limit of zero), size limits, vessel trip limits, closed seasons or areas and reopenings, acceptable biological catches (ABCs) and ABC control rules, annual catch limits (ACLs) and ACL control rules, accountability measures (AMs), annual catch targets (ACTs), quotas (including a quota of zero), MSY (or proxy), OY, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, rebuilding plans, and restrictions relative to conditions of harvested fish (maintaining fish in whole condition, use as bait).

(b) [Reserved]

■ 11. Appendix G to part 622 is added to read as follows:

Appendix G to Part 622—Coastal Migratory Pelagics Zone Illustrations

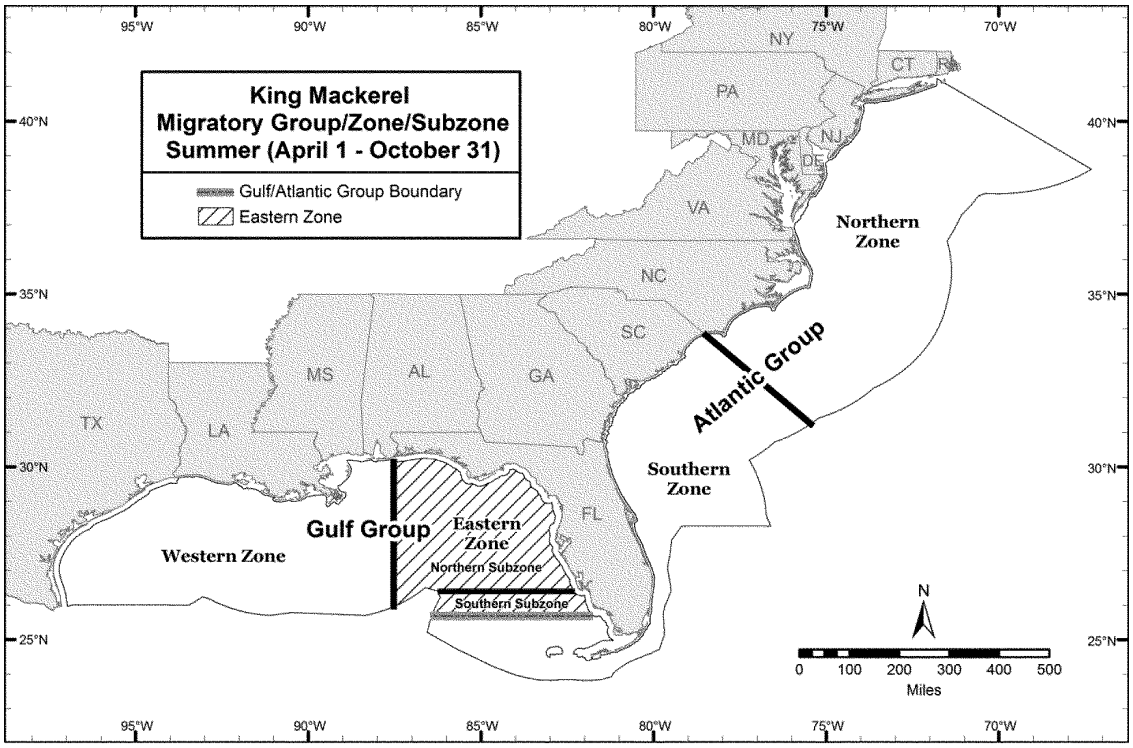


Figure 1 of Appendix G to Part 622--King Mackerel (Summer)

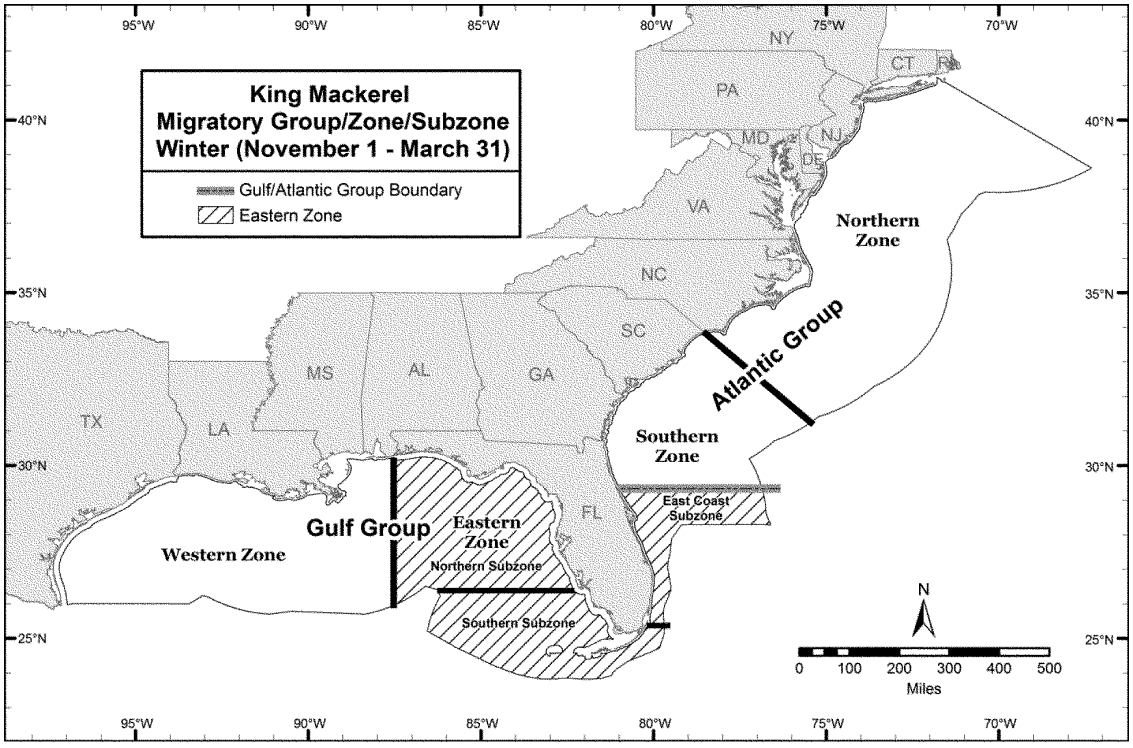


Figure 2 of Appendix G to Part 622--King Mackerel (Winter)

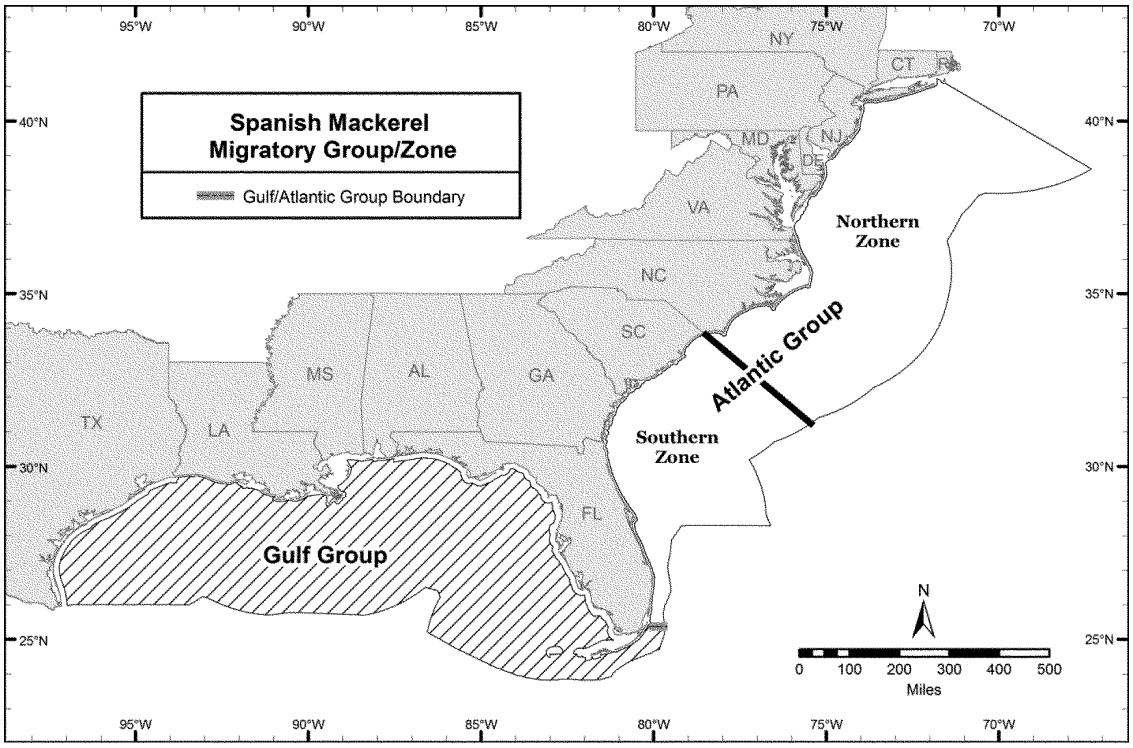


Figure 3 of Appendix G to Part 622--Spanish Mackerel

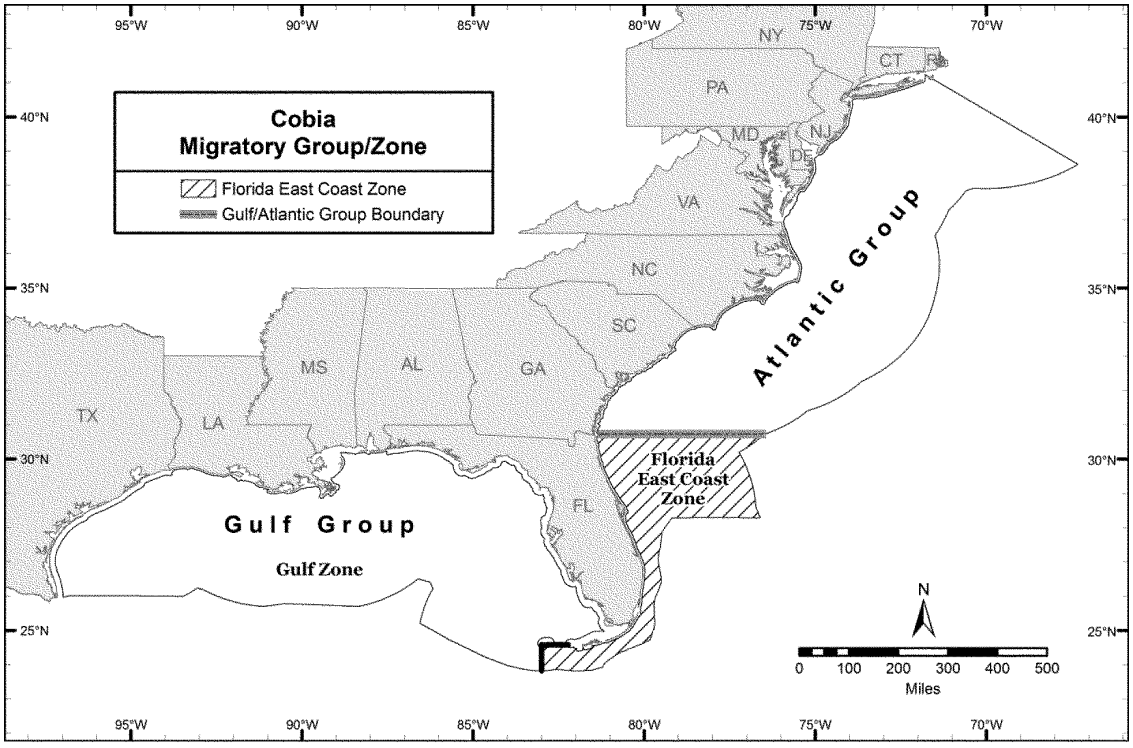


Figure 4 of Appendix G to Part 622--Cobia

[FR Doc. 2014–25855 Filed 10–30–14; 8:45 am]
BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 79, No. 211
Friday, October 31, 2014

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 27, 2014.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by December 1, 2014 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Research Service

Title: SNAP-Ed Connection Recipe Submission and Review Forms.

OMB Control Number: 0518–0043.

Summary of Collection: The National Agricultural Library's SNAP-Ed Connection (formerly the Food Stamp Nutrition Connection), contained an online recipe database called the Recipe Finder. The purpose of the Recipe Finder database is to provide the Supplemental Nutrition Assistance Program Education (SNAP–ED) providers with low-cost, easy to prepare, and healthy recipes for SNAP Nutrition Education purposes. The recipe database is now being combined with recipes from other USDA Food, Nutrition and Consumer Services programs such as the Food Distribution Programs (Food Distribution Program on Indian Reservations, Commodity Supplemental Food Program, and The Emergency Food Assistance Program), Child Nutrition Programs, and the Center for Nutrition Policy and Promotion. The unified database will provide a central location for recipe users to search for healthy recipes that support the Dietary Guidelines for Americans. The recipes will benefit participants in USDA food assistance programs, consumers, SNAP-Ed personnel, State Agency staff, school nutrition personnel, and the private sector.

Need and Use of the Information: The voluntary ''SNAP-Ed Connection Recipe Submission Form'' allows SNAP-Ed providers the opportunity to submit recipes on-line and saves contributors time and money in photocopying and mailing/faxing recipes. SNAP–ED staff reviews submissions to determine for appropriateness and eligibility for inclusion into the Recipe database. The ''SNAP-Ed Connection Recipe Submission and Review Form'' allows SNAP-Ed providers and other recipe users the opportunity to share their feedback about recipes. Recipe users benefit from reading the comments of others for personal and educational purposes. If the information is not collected, it may inhibit the ease with which SNAP-Ed providers could respond and share feedback, decreasing the integrity of the project.

Description of Respondents: Individual or households; Not-for Profit Institutions; State, Local or Tribal Government.

Number of Respondents: 3,670.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,269.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2014–25889 Filed 10–30–14; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Farm Service Agency

[Docket No. FCIC–14–0006]

Notice of Request for Renewal and Revision of the Currently Approved Information Collection

AGENCY: Risk Management Agency and Farm Service Agency, USDA.

ACTION: Renewal and revision of the currently approved information collection.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) and Risk Management Agency (RMA) are requesting comments from all interested individuals and organizations on a revision of a currently approved paperwork package associated with the Acreage and Crop Reporting Streamlining Initiative (ACRSI).

DATES: Written comments on this notice will be accepted until close of business December 30, 2014.

ADDRESSES: FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC–14–0006, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Todd Anderson, United States Department of Agriculture, Farm Service Agency, DAFP, PECD, Washington, DC 20250–0570; or Richard Anderson, Risk Management Agency, United States Department of

Agriculture, P.O. Box 419205, Kansas City, MO 64133–6205.

All comments received, including those received by mail, will be posted without change to *http://www.regulations.gov,* including any personal information provided, and can be accessed by the public. All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see *http://www.regulations.gov.* If you are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, we ask that it be in a text-based format. If you want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of your submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the RMA Web Content Team at (816) 823–4694 or by email at *rmaweb.content@rma.usda.gov.*

Privacy Act: Anyone is able to search the electronic form of all comments received for any 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 the complete User Notice and Privacy Notice for Regulations.gov at *http://www.regulations.gov/#!privacyNotice.*

FOR FURTHER INFORMATION CONTACT: Todd Anderson, United States Department of Agriculture, Farm Service Agency, DAFP, PECD, Washington, DC 20250–0570, (202) 720–9106; or Richard Anderson, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133–6205, (816) 926–3950.

SUPPLEMENTARY INFORMATION:

Title: Acreage and Crop Reporting Streamlining Initiative (ACRSI).

OMB Number: 0563–0084.

Expiration Date of Approval: March 31, 2015.

Type of Request: Extension with a revision of a currently approved information collection.

Abstract: FCIC is proposing to renew and revise the currently approved information collection, OMB Number 0563–0084. It is currently up for renewal and extension for three years. The Farm Service Agency (FSA) and Risk Management Agency (RMA) are requesting comments from all interested individuals and organizations on the revised and currently approved information collection request associated with the Acreage and Crop Reporting Streamlining Initiative (ACRSI). ACRSI is an initiative in this information collection request to reengineer the procedures, processes, and standards to simplify commodity, acreage, and production reporting by producers, eliminate or minimize duplication of information collection by multiple agencies, and reduce the burden on producers, allowing the producers to report this information through FSA county office service centers, insurance agents or through precision ag technology capabilities. FSA and RMA are implementing a single source reporting solution to establish a single data collection and reporting capability that supports USDA's programs.

FSA and RMA are also improving the existing Office of Management and Budget (OMB) approved information collections for FSA and RMA, 0560–0004, Report of Acreage, and 0563–0053, Multiple Peril Crop Insurance, acreage, and production information is generally collected from the respondent during a personal visit to the FSA Service Center and again from the respondent during a personal visit to the insurance agent. The forms will still be available to accommodate respondents with no Internet access and those who wish to continue to personally visit the FSA Service Center and insurance agent to report the information. When the single source reporting solution is fully implemented, respondents will be allowed to report the information once.

The information will also be shared by both FSA and RMA, as well as other USDA agencies, such as NRCS and NASS that have the authority and need for such information. In each phase of system implementation, some or all of the commodity, acreage, and production information in the existing approved information collections will be reported through this solution. Furthermore, the information collected will be the same as the information currently approved. Additionally, the respondent will only have to report it one time through a single source thereby reducing the respondent's burden of reporting such information and eliminating the duplicate reporting that may be currently required. The information will then be shared with the other agency without having the producer personally visit both offices. The information collected will be the same as the information currently approved and will be used in the same manner it would be used if reported separately to each agency. FSA and RMA anticipate that producers will be able to use their precision-ag systems, farm management information systems, or download data files to directly report commodity, acreage, and production information needed to participate in USDA programs. The information being collected will consist of, but not be limited to: Producer name, location state, commodity name, commodity type or variety, location county, date planted, land location (legal description, FSA farm number, FSA track number, FSA field number), intended use, prevented planting acres, acres planted but failed, planted acres, and production of commodity produced.

FSA and RMA will implement the ACRSI Initiative in phases until fully implemented. The first phase was initiated in the fall of 2011 in Dickenson, Marion, McPherson, and Saline Counties in Kansas, and only for the collection of information from producers regarding winter wheat. The second phase will be implemented in the spring of 2015 in selected counties in Illinois and Iowa for selected commodities. To ensure statutory criteria are met for both Federal crop insurance programs, FSA, and Commodity Credit Corporation (CCC) programs, the collection of commodity, acreage, and production information is necessary.

The existing approved information collections will be updated, modified or eliminated, as applicable, to reflect the reduction in burden on the respondents when the solution is fully implemented.

Respondents: Producers.

Estimated Annual Number of Respondents Utilizing the Web-Based Single Source Reporting System: 204,250.

Estimated Annual Number of Respondents Reporting the Information by Personally Visiting One Agency and Sharing Information Between Agencies: 62,005.

Estimated Annual Number of Responses per Respondent: 1.5.

Estimated Total Annual Burden on Respondents Utilizing the Web-Based Single Source Reporting System: 230,287 hours. (This estimated public reporting burden is from the existing OMB approved information collections 0560–0004.)

Estimated Total Annual Burden on Respondents Reporting the Information by Personally Visiting One Agency and Having That Information Sharing Information Between Agencies: 131,761 hours. (This estimated public reporting burden is from the existing OMB approved information collections 0560–0004, including the estimated burden for travel time.)

We are requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agencies, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected;

(4) Minimize the burden of the collection of information on those who are to respond through use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms to technology.

All comments in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget (OMB) approval.

Signed on October 27, 2014.

Michael T. Scuse,

Under Secretary, Farm and Foreign Agricultural Services.

[FR Doc. 2014–25904 Filed 10–30–14; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Quarterly Survey of Public Pensions

AGENCY: U.S. Census Bureau, 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: To ensure consideration, written comments must be submitted on or before December 30, 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(s) and instructions should be directed to Paul W. Villena, Acting Chief, Employment and Benefit Statistics Branch, Governments Division, U.S. Census Bureau, Headquarters: 6K151, Washington, DC 20233; telephone: 301–763–7286; facsimile: 301–763–6833; email: *paul.w.villena@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request clearance for the form necessary to conduct the Quarterly Survey of Public Pensions. The quarterly survey was initiated by the Census Bureau in 1968 at the request of both the Council of Economic Advisers and the Federal Reserve Board.

The Quarterly Survey of Public Pensions provides national summary data on the revenues, expenditures, and composition of assets of the largest pension systems of state and local governments. These data are used by the Federal Reserve Board to track the public sector portion of the Flow of Funds Accounts. The Bureau of Economic Analysis uses these data as part of the government sector projections in the Gross Domestic Product. Economists and public policy analysts use these data to assess general economic conditions and state and local government financial activities.

Data are collected from a panel of defined benefit plans of the 100 largest state and local government pension systems as determined by their total cash and security holdings reported in the 2012 Census of Governments.

The defined benefit plans of these 100 largest pension systems comprise 87.2 percent of financial activity among such entities, based on the 2012 Census of Governments.

II. Method of Collection

Survey data are collected through the Census Bureau's Web collection system that enables public entities to respond to the questionnaire via the Internet. The questionnaire is available online for respondents to print when they choose to mail or fax. Most respondents choose to report their data online. In addition to reporting current quarter data, respondents may report data for the previous seven quarters or submit revisions to their previously submitted data.

Usable replies are received each quarter from 80 to 95 percent of the systems canvassed. In those instances when we are not able to obtain a response, we conduct follow-up operations using email and phone calls. Imputations are developed for each of the remaining nonresponse systems in the panel from the latest available data.

III. Data

OMB Control Number: 0607–0143.

Form Number(s): F–10.

Type of Review: Regular submission.

Affected Public: State and locally-administered public pension plans.

Estimated Number of Respondents: 100.

Estimated Time per Response: 45 minutes.

Estimated Total Annual Burden Hours: 300.

Estimated Total Annual Cost to Public: $0.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. Section 182.

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: October 28, 2014.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–25925 Filed 10–30–14; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; The American Community Survey Content Review Results

AGENCY: U.S. Census Bureau, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The Department of Commerce is particularly interested in comments on seven American Community Survey (ACS) questions, highlighted in the **SUPPLEMENTARY INFORMATION** section of this Notice, which are slated for removal from the questionnaire based on the results of the 2014 ACS Content Review. Concurrently, Federal agencies that are the principal sponsors of these seven questions are invited to respond either to the U.S. Census Bureau directly or through this notice and to provide revised or additional justification for retaining these questions on the ACS.

DATES: To ensure consideration, written comments must be submitted on or before December 30, 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(s) and instructions should be directed to Cheryl Chambers, Rm. 3K067, U.S. Census Bureau, American Community Survey Office, Washington, DC 20233 or via email to *ACSO.communications@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Since the founding of the nation, the U.S. Census has mediated between the demands of a growing country for information about its economy and people, and the people's privacy and respondent burden. Beginning with the 1810 Census, Congress added questions to support a range of public concerns and uses, and over the course of a century questions were added about agriculture, industry, and commerce, as well as occupation, ancestry, marital status, disabilities, and other topics. In 1940, the U.S. Census Bureau introduced the long form and since then only the more detailed questions were asked of a sample of the public.

The ACS, launched in 2005, is the current embodiment of the long form of the census, and is asked each year of a sample of the U.S. population in order to provide current data needed more often than once every ten years. In December of 2010, five years after its launch, the ACS program accomplished its primary objective with the release of its first set of estimates for every area of the United States. The Census Bureau concluded it was an appropriate time to conduct a comprehensive assessment of the ACS program. This program assessment focused on strengthening programmatic, technical, and methodological aspects of the survey to assure that the Census Bureau is an efficient and effective shared service provider. The assessment also provided an opportunity to examine and confirm the value of each question on the ACS, which resulted in the 2014 ACS Content Review.

The 2014 ACS Content Review is the most comprehensive effort ever undertaken by the Census Bureau to review content on the survey, seeking to understand which federal programs use the information collected by each question, the justification for each question, and assess how the Census Bureau might reduce respondent burden. This review included examination of all 72 questions contained on the 2014 ACS questionnaire, including 24 housing-related questions and 48 person-related questions. Prior to this review, there were approximately 175 known federal uses. As a result of the federal agencies' commitment to the review, over 125 additional uses were identified, bringing the total number to over 300.

Each participating agency provided the Census Bureau with the uses and justifications for questions, and each corresponding Office of General Counsel validated the legal basis for each question. The Department of Commerce Office of General Counsel further confirmed these legal statements and categorized each use as either mandatory,[1] regulatory,[2] or programmatic.[3] Of the 72 questions, only three of the questions did not have either a mandatory or required use, with 39 questions having at least one mandatory use, 64 questions having at least one regulatory use, and 70 questions having at least one programmatic use. The outcome of the Content Review is to identify questions for removal or modification, while continuing to provide information to meet federal agencies' needs.

[1] A federal law explicitly calls for use of decennial census or American Community Survey data on that question.

[2] A federal law (or implementing regulation) explicitly requires the use of data and the decennial or the American Community Survey is the historical source; or the data are needed for case law requirements imposed by the U.S. federal court system.

[3] The data are needed for program planning, implementation, or evaluation and there is no explicit mandate or requirement.

II. Method of Collection

In August 2012, the OMB and the Census Bureau chartered the Interagency Council of Statistical Policy (ICSP) Subcommittee for the ACS to ''provide advice to the Director of the Census Bureau and the Chief Statistician at OMB on how the ACS can best fulfill its role in the portfolio of Federal household surveys and provide the most useful information with the least amount of burden.'' The Subcommittee charter also states that the Subcommittee would be expected to ''conduct regular, periodic reviews of the ACS content . . . designed to ensure that there is clear and specific authority and justification for each question to be on the ACS, the ACS is the appropriate vehicle for collecting the information, respondent burden is being minimized, and the quality of the data from ACS is appropriate for its intended use.''

The ICSP Subcommittee established the two analysis factors—benefit as defined by the level of usefulness and cost as defined by the level of respondent burden or difficulty in obtaining the data. The Subcommittee also established the 19 decision criteria –13 benefit criteria and six cost criteria. Given these criteria, the collection of nine data sets was required. The five data sets that were collected to demonstrate ACS benefits (usefulness) included:

Federal Agency ACS Data Uses—Agencies were asked to document: (1) Justification for question use; (2) mandatory, regulatory, and programmatic uses; (3) lowest level of geography required; (4) frequency of use; (5) funding formulas and the amount of funding distributed based on the questions; and, (6) characteristics of the population supported by the question. The Office of General Counsel for each agency submitting uses to the Census Bureau confirmed the legal citations associated with each of the stated uses. The Department of Commerce Office of General Counsel subsequently validated each use to adjudicate whether the use is Mandatory, Regulatory, or Programmatic.

Federal Agency Alternative Data Sources—Agencies were also asked to identify alternative data sources to the ACS.

Computation of Questions' Estimates Coefficients of Variation—Census Bureau subject matter experts examined

the coefficient of variation (CV) associated with an estimate for each question at the county level, providing insight into the quality of the measure by geography.

Computation of Questions' Estimates Interquartile Ranges—Census Bureau subject matter experts computed interquartile ranges associated with an estimate for each question at the county level, providing insight into the amount of variability in the estimates by geography.

ACS Used as another Survey's Sampling Frame—Other surveys that used the ACS as a sampling frame were identified, including the ACS questions that were used to identify the survey sample of respondents.

Four data sets reflecting measures of cost (burden) were collected. These included:

Survey of Interviewers—ACS interviewers were surveyed to identify three of the cost indicators: Which questions respondents find cognitively burdensome, or sensitive, and which ones are the most difficult.

Time to Respond Response—Response times to questionnaires via automated modes (Internet, call center, and in-person interviews) were measured to determine how long it took respondents to answer each question.

Allocation Rates—Allocation rates by questions were computed to determine which questions were left blank requiring statistical methods to fill in the response. That is, which questions required more imputation due to missing information.

Complaints—Complaints about the ACS received by email, letter, or telephone were examined and associated with questions so that counts could be obtained.

Based on the analysis of the 9 data sets reflecting the 19 decision criteria, each question received a total number of points between 0 and 100 based on its benefits, and 0 and 100 points based on its costs. These points were then used as the basis for creating four categories: *High Benefit and Low Cost; High Benefit and High Cost; Low Benefit and Low Cost; or Low Benefit and High Cost.* For this analysis, any question that was designated as either *Low Benefit and Low Cost* or *Low Benefit and High Cost* and was *NOT* designated as Mandatory (i.e., statutory) by the Department of Commerce Office of General Counsel or *NOT* Required (i.e., regulatory) with a sub-state use, was identified as a potential candidate for removal. Initially 21 questions (17 percent) fell into the Low Benefit/Low Cost category and three questions (3 percent) fell into the Low Benefit/High Cost category, for a combined total of 24 questions in either of the Low Benefit categories. However, after removing those that were Mandatory or Required with a sub-state use, only seven (6 percent) of the 24 questions remained. These seven questions were all in the Low Benefit and Low Cost category.

These seven questions include, with the 2014 ACS questionnaire wording in italics: Housing Question No. 6—Business/Medical Office on Property—*Is there a business (such as a store or barber shop) or a medical office on this property?*

Person Question No. 12—Undergraduate Field of Degree—*This question focuses on this person's Bachelor's Degree. Please print below the specific major(s) of any Bachelor's Degrees this person has received.*

Person Question No. 21a—Get Married—*In the past 12 months did this person get—Married?*

Person Question No. 21b—Get Widowed—*In the past 12 months did this person get—Widowed?*

Person Question No. 21c—Get Divorced—*In the past 12 months did this person get—Divorced?*

Person Question No. 22—Times Married—*How many times has this person been married?*

Person Question No. 23—Year Last Married—*In what year did this person last get married?*

The public is invited to comment on all questions on the American Community Survey; however, the Census Bureau is particularly interested in comments on these seven ACS questions listed above, which are slated for removal from the questionnaire based on the results of the 2014 Content Review. Concurrently, Federal agencies that are the principal sponsors of these seven questions are invited to respond either directly to the Census Bureau or through this notice and provide revised or additional justification for these questions, especially concerning strategies to reduce respondent burden. We would anticipate comments concerning such strategies as examining alternative data sources, changes to wording or presentation, using a more limited sample, reducing question frequency, federal agency collaboration on the review of statutes or regulations, among others.

To view all 2014 ACS questions by category with their associated justifications, please visit: *http://www.census.gov/acs/www/about_the_survey/acs_content_review/*.

III. Data

OMB Control Number: 0607–0810.

Form Number(s): ACS–1(2014).

Type of Review: Regular submission.

Affected Public: Federal and legislative agencies, individuals, households, and businesses. We plan to contact the following number of respondents each year: 3,540,000 households; 200,000 persons in group quarters; 20,000 contacts in group quarters; 43,000 households for reinterview; and 1,500 group quarters contacts for reinterview.

Estimated Time per Response: 40 minutes for the average household questionnaire.

Estimated Total Annual Burden Hours: The estimate is an annual average of 2,337,900 burden hours.

Estimated Total Annual Cost to Public: Except for their time, there is no cost to respondents.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. Sections 141 and 193 or other authority authorizing or requiring the collection.

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: October 28, 2014.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–25912 Filed 10–30–14; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 141016857–4857–01]

Annual Retail Trade Survey

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of determination.

SUMMARY: The U.S. Department of Commerce's Bureau of the Census (Census Bureau) publishes this notice to announce that the Director of the Census Bureau has determined the need to conduct the 2014 Annual Retail Trade Survey (ARTS). ARTS covers employer firms with establishments located in the United States and classified in the Retail Trade and/or Accommodation and Food Services sectors as defined by the 2007 North American Industry Classification System (NAICS). The Census Bureau conducts the ARTS to provide continuing and timely national statistical data on retail trade, and accommodation and food services activity annually.

ADDRESSES: The Census Bureau will provide report forms to businesses included in the survey. Additional copies are available upon written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

FOR FURTHER INFORMATION CONTACT: Chris Savage, Economy Wide Division, at (301) 763–4834 or by email at *john.c.savage@census.gov.*

SUPPLEMENTARY INFORMATION: Sections 182, 224, and 225 of Title 13 of the United States Code (U.S.C.) authorize the Census Bureau to take surveys that are necessary to produce current data on the subjects covered by the major censuses. As part of this authorization, the Census Bureau conducts the ARTS to provide continuing and timely national statistical data on retail trade, and accommodation and food services activity for the period between economic censuses. ARTS is a continuation of similar retail trade surveys conducted each year since 1951 (except 1954). ARTS covers employer firms with establishments located in the United States and classified in the Retail Trade and/or Accommodation and Food Services sectors as defined by the 2007 North American Industry Classification System (NAICS). ARTS provides, on a comparable classification basis, annual sales, annual e-commerce sales, year-end inventories held inside and outside the United States, total operating expenses, purchases, accounts receivables, and, for selected industries, merchandise line sales for 2014. The Census Bureau has determined that the conduct of this survey is necessary because these data are not available publicly on a timely basis from any other sources.

Firms are selected for the ARTS survey using a stratified random sample based on industry groupings and annual sales size. We will provide report forms to the firms covered by this survey in February 2015, and will require their responses within 50 days after receipt. Firms' responses to the ARTS survey are required by law (13 U.S.C. 182, 224, and 225). The sample of firms selected will provide, with measurable reliability, statistics on the transactions relevant to this survey for 2014.

The data collected in this survey will be similar to that collected in the past, and within the general scope and nature of those inquiries covered in the economic census. These data are collected to provide a sound statistical basis for the formation of policy by various government agencies. Results will be available for use for a variety of public and business needs including economic and market analysis, company performance, and forecasting future demand.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3521, unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, OMB has approved the Annual Retail Trade Survey under OMB Control Number 0607–0013.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: October 24, 2014.

John H. Thompson,

Director, Bureau of the Census.

[FR Doc. 2014–25946 Filed 10–30–14; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–47–2014]

Foreign-Trade Zone 25—Broward County, Florida; Authorization of Production Activity; Prodeco Technologies, LLC; (Electric Bicycles) Oakland Park, Florida

On June 27, 2014, the Port Everglades Department of Broward County, grantee of FTZ 25, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Prodeco Technologies, LLC, in Oakland Park, Florida.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (79 FR 38007–38008, 7–3–2014). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: October 28, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–25953 Filed 10–30–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–836]

Glycine From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* October 31, 2014.

SUMMARY: On December 26, 2013, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on glycine from the People's Republic of China (PRC) in the **Federal Register**.[1] The review covers the period from March 1, 2012, through February 28, 2013. In the *Preliminary Results,* the Department preliminarily applied facts otherwise available with an adverse inference to the PRC-wide entity because an element of the entity, Hebei Donghua Jiheng Fine Chemical Co., Ltd. (Donghua Fine Chemical), failed to act to the best of its ability in complying with the Department's request for information and, consequently, significantly impeded the proceeding. The Department gave interested parties an opportunity to comment on the *Preliminary Results* and, based on an analysis of the comments received, we found that no changes were warranted to these final results of review. However, based on further review of the record, we found that some companies did not have any reviewable entries of subject merchandise during the review period. The final weighted-average dumping margin for the review is listed below in the ''Final Results of Review'' section of this notice.

[1] *See Glycine From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013,* 78 FR 78331 (December 26, 2013) (*Preliminary Results*).

FOR FURTHER INFORMATION CONTACT: Edythe Artman or Angelica Mendoza, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3931 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 26, 2013, the Department published the *Preliminary Results* for this review, which covers the period from March 1, 2012, through February 28, 2013.[2] In the *Preliminary Results,* we invited interested parties to comment on our findings and to request a hearing to discuss any issues raised in case and rebuttal briefs. Timely comments were received from the sole respondent in the review, Donghua Fine Chemical, the domestic interested party, GEO Specialty Chemicals, Inc., and two other interested parties, Evonik Rexim (Nanning) Pharmaceutical Co., Ltd. (Evonik), and Paras Intermediates Pvt. Ltd (Paras). GEO and Paras also submitted timely rebuttal comments. Donghua Fine Chemical and Evonik requested a public hearing to discuss briefed issues and a hearing was held on March 12, 2014.

On July 23, 2014, we extended the issuance of the final results of review until October 22, 2014.[3]

Scope of the Order

The product covered by this antidumping duty order is glycine, which is a free-flowing crystalline material, like salt or sugar. Glycine is produced at varying levels of purity and is used as a sweetener/taste enhancer, a buffering agent, reabsorbable amino acid, chemical intermediate, and a metal complexing agent. This proceeding includes glycine of all purity levels. Glycine is currently classified under subheading 2922.49.4020 of the Harmonized Tariff Schedule of the United States (HTSUS). In a separate scope ruling, the Department determined that D(-) Phenylglycine Ethyl Dane Salt is outside the scope of the order.[4] Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

Determination of No Shipments

We received timely-filed ''no-shipment'' certifications from eight companies named in the notice of initiation and, in each certification, the company stated that it had no entries of subject merchandise during the period of review. These companies were: (1) AICO Laboratories India Ltd. (AICO), (2) Avid Organics, (3) Aqua Bond Inc., (4) Gurvey & Berry Co., (5) H.T. Griffin Food Ingredients, (6) Paras Intermediates Pvt. Ltd., (7) Unipex Solutions Canada Inc., and (8) Yuki Gosei Kogyo Co. We confirmed these companies had no entries in the data that we obtained from U.S. Customs and Border Protection (CBP) covering the period of review.[5] Consistent with our practice [6] and based on the no-shipment certifications and the CBP data, we determine that these companies did not have any reviewable entries of subject merchandise during the review period and, accordingly, we will issue instructions that are consistent with our ''automatic assessment''' clarification for these final results.[7] For these companies, the cash deposit requirements will remain unchanged.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by interested parties are addressed in the issues and decision memorandum, accompanying this notice, which is hereby adopted by this notice.[8] A list of the issues which the parties raised and to which the Department responded in the memorandum appears in the appendix of this notice. The Issues and 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 Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the memorandum are identical in content.

Changes Since the Preliminary Results

We made no changes to the *Preliminary Results* based on our analysis of the comments received from parties. However, based on our review of the record, including the review of the no-shipment determinations and CBP data described above, we have found that eight companies had no reviewable entries of subject merchandise during the period of review.

Final Determination as to the PRC-wide Entity

As detailed in the decision memorandum accompanying the *Preliminary Results,*[9] the Department found that, because Donghua Fine Chemical had not qualified for a separate rate in a prior segment of the proceeding and had not filed the requisite application in this review, it was part of the PRC-wide entity. The Department then preliminarily determined that it had to rely on facts otherwise available to assign a dumping margin to the PRC-wide entity in accordance with sections 776(a)(1), (2)(A), (B) and (C) of the Tariff Act of 1930, as amended (the Act), because necessary information was not on the record, the PRC-wide entity (including Donghua Fine Chemical) had withheld information that was requested within the established deadline, and, by not providing requested information, the entity had significantly impeded the proceeding. We further preliminarily found that Donghua Fine Chemical's failure to provide the requested information constituted circumstances

[2] *Id.*

[3] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Edythe Artman, International Trade Compliance Analyst, Office VI, Antidumping and Countervailing Duty Operations, regarding ''Glycine from the People's Republic of China: Extension of Deadline for the Final Results of Antidumping Duty Administrative Review; 2012–2013,'' dated July 23, 2014.

[4] *See Notice of Scope Rulings and Anticircumvention Inquiries,* 62 FR 62288 (November 21, 1997).

[5] *See* Memorandum to the File from Edythe Artman, International Trade Compliance Analyst, regarding ''Release of United States Customs and Border Protection Entry Data for Selection of Respondents for Individual Review, dated May 8, 2013.

[6] *See, e.g., Small Diameter Graphite Electrodes From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011–2012,* 78 FR 55680, 55681 (September 11, 2013).

[7] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

[8] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding ''Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Glycine from the People's Republic of China; 2012–2013,'' dated October 22, 2014 (Issues and Decision Memorandum).

[9] *See* Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review; 2012–2013: Glycine from the People's Republic of China'' (Preliminary Decision Memorandum), dated December 18, 2013.

under which the company and, hence, the PRC-wide entity, had not acted to the best of its ability to comply with the Department's request for information. We therefore preliminarily determined, pursuant to section 776(b) of the Act, that the PRC-wide entity failed to cooperate by not acting to the best of its ability and that, accordingly, when selecting from among the facts otherwise available, an adverse inference was warranted with respect to the PRC-wide entity.

The Department also stated its intent in the *Preliminary Results* not to rescind the review for 40 exporters because these companies had been named in the initiation notice for the review, were then withdrawn from consideration of individual review because of the submission of timely withdrawals of requests for review by GEO, and do not have separate rates from a completed segment of the proceeding. We thus found all of the companies to be part of the PRC-wide entity under review. However, in light of our no-shipment determinations, only the following companies remain in this category: (1) A&A Pharmachem Inc., (2) Amol Pharmaceuticals Pvt. Ltd., (3) Baoding Mantong Fine Chemistry Co., Ltd., (4) Beijing Onlystar Technology Co., Ltd., (5) Chiyuen International Trading Ltd., (6) China Jiangsu International Economic Technical Cooperation Corporation, (7) E-Heng Import and Export Co., Ltd., (8) Evonik Rexim (Nanning) Pharmaceutical Co., Ltd., (9) FarmaSino Pharmaceuticals (Jiangsu) Co., Ltd., (10) General Ingredient Inc., (11) Gulbrandsen Technologies (India), (12) Hong Kong United Biochemistry Co. Ltd., (13) Jiangsu Dongchang Chemical, (14) Jiangxi Ansun Chemical Technology, (15) Jiangyin Trust International Inc., (16) Jizhou City Huayang Chemical Co., Ltd., (17) Kissner Milling Co. Ltd., (18) NALCO Canada Co., (19) Ningbo Create-Bio Engineering Co. Ltd., (20) Ningbo Generic Chemical Co., (21) Qingdao Samin Chemical Co., Ltd., (22) Ravi Industries, (23) Salvi Chemical Industries, (24) Shanpar Industries Pvt. Ltd., (25) Showa Denko K.K., (26) Shijiazhuang Jackchem Co., Ltd., (27) Shijiazhuang Zexing Amino Acid Co., (28) Tianjin Garments Import & Export, (29) Tianjin Tiancheng Pharmaceutical Company, (30) Tianjin Tianen Enterprise Co. Ltd., (31) Tywoon Development (China) Co., Ltd., and (32) XPAC Technologies Inc.

The Department found no basis to make changes to the *Preliminary Results* based on our analysis of the comments received by parties on those results.

Therefore, for these final results, the Department finds that Donghua Fine Chemical and the 32 exporters named in this section are part of the PRC-wide entity and that the use of adverse facts available is warranted with respect to the PRC-wide entity.

Final Results of Review

The Department determines that the following percentage weighted-average dumping margin exists for the period March 1, 2012, through February 28, 2013:

Exporter	Dumping margin (percent)
PRC-wide entity (including Hebei Donghua Jiheng Fine Chemical Co., Ltd.) [10]	453.79

[10] As noted immediately above, the PRC-wide entity also includes the 32 exporters we are not rescinding from the review.

Disclosure

Normally, the Department discloses to interested parties the calculations performed in connection with a final determination within five days of the date of publication of the notice of the final determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). But because the Department applied adverse facts available to determine the estimated weighted-average dumping margin for the mandatory respondent in this investigation, there are no calculations to disclose to parties.

Assessment Rates

The Department determined, and the U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.[11] The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

For the PRC-wide entity, the Department will instruct CBP to assess antidumping duties on entries of subject merchandise at the PRC-wide rate of 453.79 percent. For companies we found to have no reviewable entries in this review period, we will instruct CBP to assess duties on entries of subject merchandise consistent with our ''automatic assessment'' clarification for these final results.

Cash Deposit Requirements

The following cash-deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice of final results of the administrative review, as provided by section 751(a)(2)(C) of the Act: (1) For any previously investigated or reviewed PRC and non-PRC exporters which are not under review in this segment of the proceeding that received a separate rate in a previous segment of this proceeding, the cash-deposit rate will continue to be the exporter-specific rate published for the most recently-completed period; (2) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, including Donghua Fine Chemical, the cash-deposit rate will be that for the PRC-wide entity (*i.e.,* 453.79 percent); and (3) 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(s) that supplied the non-PRC exporter. These cash-deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a 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 period of review. 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.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or

[11] *See* 19 CFR 351.212(b).

conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these final results and this notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: October 22, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Comments Discussed in the Accompanying Final Issues and Decision Memorandum

I. Summary
II Background
III. Period of Investigation
IV. Scope of the Investigation
V. Discussion of Comments
Comment 1: Application of Adverse Facts Available to the PRC-Wide Entity
Comment 2A: The Status of Paras as Part of the PRC-Wide Entity
Comment 2B: The Status of Evonik as Part of the PRC-Wide Entity
VI. Recommendation

[FR Doc. 2014–25859 Filed 10–30–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATED: *Effective Date:* October 31, 2014.

SUMMARY: The Department of Commerce (the Department) has determined that three requests for new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC), meet the statutory and regulatory requirements for initiation.

FOR FURTHER INFORMATION CONTACT: Catherine Cartsos, 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) 482–1757.

SUPPLEMENTARY INFORMATION:

Background

The antidumping duty order on freshwater crawfish tail meat from the PRC published in the **Federal Register** on September 15, 1997.[1] Pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the Act), we received three timely requests for new shipper reviews of the *Order* from Wuhan Coland Aquatic Products and Food Co., Ltd. (Coland), Weishan Hongda Aquatic Food Co., Ltd. (Hongda), and Hubei Yuesheng Aquatic Products Co., Ltd. (Hubei Yuesheng).[2] Each new shipper review applicant certified that it is both the producer and exporter of the subject merchandise upon which its request was based.[3]

Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), each new shipper applicant certified that it did not export subject merchandise to the United States during the period of investigation (POI).[4] In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), each new shipper applicant certified that, since the initiation of the investigation, it has never been affiliated with any exporter or producer who exported subject merchandise to the United States during the POI, including those respondents not individually examined during the POI.[5] As required by 19 CFR 351.214(b)(2)(iii)(B), each new shipper applicant also certified that its export activities were not controlled by the government of the PRC.[6]

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2), each new shipper applicant submitted documentation establishing the following: (1) The date on which it first shipped subject merchandise for export to the United States; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.[7]

Period of Review

In accordance with 19 CFR 351.214(g)(1)(A), the period of review (POR) for new shipper reviews initiated in the month immediately following the anniversary month will be the twelve-month period immediately preceding the anniversary month. Therefore, under the *Order,* the POR is September 1, 2013, through August 31, 2014.

Initiation of New Shipper Reviews

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(d)(1), the Department finds that the request from each new shipper applicant meets threshold requirements for the initiation of a new shipper review of shipments of freshwater crawfish tail meat from the PRC produced and exported by each new shipper applicant.[8]

The Department intends to issue the preliminary results of these new shipper reviews no later than 180 days from the date of initiation and the final results of the review no later than 90 days after the date the preliminary results are issued.[9] It is the Department's usual practice, in cases involving non-market economy countries, to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue a questionnaire to each new shipper applicant which will include a section requesting information concerning its eligibility for a separate rate. The new shipper review of each new shipper applicant will be rescinded if the Department determines that each new shipper applicant has not demonstrated that it is eligible for a separate rate. In addition, the Department has concerns with certain information contained in entry data that the Department obtained from U.S. Customs and Border Protection (CBP). Due to the business proprietary nature of this information, please refer to the Initiation Checklists for further discussion. The Department intends to address these concerns after initiation of the new shipper reviews. If

[1] *See Notice of Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Freshwater Crawfish Tail Meat From the People's Republic of China,* 62 FR 48218 (September 15, 1997) (*Order*).

[2] *See* Coland's new shipper review request dated September 18, 2014 (Coland NSR request); Hongda's new shipper review request dated September 29, 2014 (Hongda NSR request); Hubei Yuesheng's new shipper review request dated September 30, 2014 (Hubei Yuesheng NSR request).

[3] *See* Coland NSR request at page 1; Hongda NSR request at Exhibit 1; Hubei Yuesheng NSR request at Exhibit 2.

[4] *See* Coland NSR request at Attachment 1; Hongda NSR request at Exhibit 1; Hubei Yuesheng NSR request at Exhibit 2.

[5] *Id.*

[6] *Id.*

[7] *See* Coland NSR request at Attachment 2; Hongda NSR request at Exhibit 2; Hubei Yuesheng NSR request at Exhibit 1.

[8] *See* the memoranda to the file entitled ''Freshwater Crawfish Tail Meat from the People's Republic of China: Initiation Checklist for Antidumping Duty New Shipper Review of Wuhan Coland Aquatic Products and Food Co., Ltd.'' dated concurrently with this notice; ''Freshwater Crawfish Tail Meat from the People's Republic of China: Initiation Checklist for Antidumping Duty New Shipper Review of Weishan Hongda Aquatic Food Co., Ltd.'' dated concurrently with this notice; and ''Freshwater Crawfish Tail Meat from the People's Republic of China: Initiation Checklist for Antidumping Duty New Shipper Review of Hubei Yuesheng Aquatic Products Co., Ltd.'' dated concurrently with this notice. (Collectively, Initiation Checklists.)

[9] *See* section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i).

the Department subsequently determines, based on information collected, that a new shipper review for any applicant is not warranted, the Department may rescind the review or apply facts available pursuant to section 776 of the Act, as appropriate.

We will instruct CBP to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from each new shipper applicant in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Because each new shipper applicant certified that it produced and exported subject merchandise, the sale of which is the basis for the request for a new shipper review, we will apply the bonding privilege to each new shipper applicant only for subject merchandise which was produced and exported by each new shipper applicant.

To assist in its analysis of the *bona fides* of each new shipper applicant's sales, upon initiation of this new shipper review, the Department will require each new shipper applicant to submit on an ongoing basis complete transaction information concerning any sales of subject merchandise to the United States that were made subsequent to the POR.

Interested parties requiring access to proprietary information in the new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: October 24, 2014.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–25958 Filed 10–30–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD457

Atlantic Highly Migratory Species; Atlantic Shark Management Measures; 2015 Research Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent; request for applications.

SUMMARY: NMFS announces its request for applications for the 2015 shark research fishery from commercial shark fishermen with directed or incidental shark limited access permits. The shark research fishery allows for the collection of fishery-dependent and biological data for future stock assessments to meet the shark research objectives of the Agency. The only commercial vessels authorized to land sandbar sharks are those participating in the shark research fishery. Shark research fishery permittees may also land other large coastal sharks (LCS), small coastal sharks (SCS), and pelagic sharks. Commercial shark fishermen who are interested in participating in the shark research fishery need to submit a completed Shark Research Fishery Permit Application in order to be considered.

DATES: Shark Research Fishery Applications must be received no later than 5 p.m., local time, on December 1, 2014.

ADDRESSES: Please submit completed applications to the HMS Management Division at:

- Mail: Attn: Guý DuBeck, HMS Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910.
- Fax: (301) 713–1917.

For copies of the Shark Research Fishery Permit Application, please write to the HMS Management Division at the address listed above, call (301) 427–8503 (phone), or fax a request to (301) 713–1917. Copies of the Shark Research Fishery Application are also available at the HMS Web site at *http://www.nmfs.noaa.gov/sfa/hms/index.htm.* Additionally, please be advised that your application may be released under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz or Guý DuBeck, at (301) 427–8503 (phone) or (301) 713–1917 (fax).

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Consolidated HMS Fishery Management Plan (FMP) is implemented by regulations at 50 CFR part 635.

The shark research fishery was established, in part, to maintain time series data for stock assessments and to meet NMFS' research objectives. Since the shark research fishery was established in 2008, the research fishery has allowed for: The collection of fishery dependent data for current and future stock assessments; the operation of cooperative research to meet NMFS' ongoing research objectives; the collection of updated life-history information used in the sandbar shark (and other species) stock assessment; the collection of data on habitat preferences that might help reduce fishery interactions through bycatch mitigation; and the evaluation of the utility of the mid-Atlantic closed area on the recovery of dusky sharks and collection of hook-timer and pop-up satellite archival tag (PSAT) information to determine at-vessel and post-release mortality of dusky sharks.

The shark research fishery allows selected commercial fishermen the opportunity to earn revenue from selling additional sharks, including sandbar sharks. Only the commercial shark fishermen selected to participate in the shark research fishery are authorized to land sandbar sharks subject to the sandbar quota available each year. The base quota is 116.6 metric (mt) dressed weight (dw) per year, although this number may be reduced in the event of overharvests, if any. The selected shark research fishery permittees will also be allowed to land other LCS, SCS, and pelagic sharks per any restrictions established on their shark research fishery permit. Generally, the shark research fishery permits are valid only for the calendar year for which they are issued.

The specific 2015 trip limits and number of trips per month will depend on the availability of funding, number of selected vessels, the availability of observers, the available quota, and the objectives of the research fishery and will be included in the permit terms at time of issuance. The number of participants in the research fishery change each year. In 2014, five fishermen were chosen to participate. From 2008 through 2014, there has been an average of seven participants each year with the range from five to eleven. The trip limits and the number of trips taken per month have changed each year the research fishery has been active. Participants may also be limited on the amount of gear they can deploy on a given set (e.g., number of hooks and sets, soak times, length of longline).

In 2014, NMFS split the sandbar and LCS research fishery quotas equally among selected participants, with each vessel allocated 18.6 mt dw of sandbar shark research fishery quota and 8.0 mt dw of other LCS research fishery quota. NMFS also established a regional dusky bycatch limit where once three or more dusky sharks were caught dead in any

of five designated regions across the Gulf of Mexico and Atlantic through the entire year, any shark research fishery permit holder in that region was not able to soak their gear for longer than 3 hours. If there were three or more additional dusky shark interactions (alive or dead) observed, shark research fishery permit holders were not able to make a trip in that region for the remainder of the year, unless otherwise permitted by NMFS. There were slightly different measures established for shark research fishery participants in the mid-Atlantic shark closed area in order to allow NMFS observers to place satellite archival tags on dusky sharks and collect other scientific information on dusky sharks while also minimizing any dusky shark mortality.

Participants were also required to keep any dead sharks, unless they were a prohibited species, in which case they were required to release them. If the regional non-blacknose SCS, blacknose, and/or pelagic shark management group quotas were closed, then the shark research fishery permit holder fishing in the closed region had to discard all of the species from the closed management groups regardless of condition. Any sharks, except prohibited species or closed management groups (i.e., SCS or pelagic sharks), caught and brought to the vessel alive could have been released alive or landed. In addition, participants were restricted by the number of longline sets as well as the number of hooks they could deploy and have on board the vessel. The vessels participating in the shark research fishery fished an average of one trip per month.

In order to participate in the shark research fishery, commercial shark fishermen need to submit a completed Shark Research Fishery Application by the deadline noted above (see **DATES**) showing that the vessel and owner(s) meet the specific criteria outlined below.

Research Objectives

Each year, the research objectives are developed by a shark board, which is comprised of representatives within NMFS, including representatives from the Southeast Fisheries Science Center (SEFSC) Panama City Laboratory, Northeast Fisheries Science Center Narragansett Laboratory, the Southeast Regional Office, Protected Resources Division, and the HMS Management Division. The research objectives for 2015 are based on various documents, including the 2012 Biological Opinion for the Continued Authorization of the Atlantic Shark Fisheries and the Federal Authorization of a Smoothhound Fishery, 2010/2011 U.S. South Atlantic blacknose, U.S. Gulf of Mexico blacknose, sandbar, and dusky sharks stock assessment and the 2012 U.S. Gulf of Mexico blacktip shark stock assessment. The 2015 research objectives are:

- Collect reproductive, length, sex, and age data from sandbar and other sharks throughout the calendar year for species-specific stock assessments;
- Monitor the size distribution of sandbar sharks and other species captured in the fishery;
- Continue on-going tagging shark programs for identification of migration corridors and stock structure using dart and/or spaghetti tags;
- Maintain time-series of abundance from previously derived indices for the shark bottom longline observer program;
- Sample fin sets (e.g. dorsal, pectoral) from prioritized species to further develop fin identification guides;
- Acquire fin-clip samples of all shark and other species for genetic analysis;
- Attach satellite archival tags to endangered smalltooth sawfish to provide information on critical habitat and preferred depth, consistent with the requirements listed in the take permit issued under Section 10 of the Endangered Species Act to the SEFSC observer program;
- Attach satellite archival tags to prohibited dusky and other sharks, as needed, to provide information on daily and seasonal movement patterns, and preferred depth;
- Evaluate hooking mortality and post-release survivorship of dusky, hammerhead, blacktip, and other sharks using hook-timers and temperature-depth recorders;
- Evaluate the effects of controlled gear experiments in order to determine the effects of potential hook changes to prohibited species interactions and fishery yields;
- Examine the size distribution of sandbar and other sharks captured throughout the fishery including in the Mid-Atlantic shark time/area closure off the coast of North Carolina from January 1 through July 31; and
- Develop allometric and weight relationships of selected species of sharks (e.g. hammerhead, sandbar, blacktip shark).

Selection Criteria

Shark Research Fishery Permit Applications will be accepted only from commercial shark fishermen who hold a current directed or incidental shark limited access permit. While incidental permit holders are welcome to submit an application, to ensure that an appropriate number of sharks are landed to meet the research objectives for this year, NMFS will give priority to directed permit holders as recommended by the shark board. As such, qualified incidental permit holders will be selected only if there are not enough qualified directed permit holders to meet research objectives.

The Shark Research Fishery Permit Application includes, but is not limited to, a request for the following information: Type of commercial shark permit possessed; past participation in the commercial shark fishery (not including sharks caught for display); past involvement and compliance with HMS observer programs per 50 CFR 635.7; past compliance with HMS regulations at 50 CFR part 635; availability to participate in the shark research fishery; ability to fish in the regions and season requested; ability to attend necessary meetings regarding the objectives and research protocols of the shark research fishery; and ability to carry out the research objectives of the Agency. An applicant who has been charged criminally or civilly (e.g., issued a Notice of Violation and Assessment (NOVA) or Notice of Permit Sanction) for any HMS-related violation will not be considered for participation in the shark research fishery. In addition, applicants who were selected to carry an observer in the previous 2 years for any HMS fishery, but failed to contact NMFS to arrange the placement of an observer as required per 50 CFR 635.7, will not be considered for participation in the 2015 shark research fishery. Applicants who were selected to carry an observer in the previous 2 years for any HMS fishery and failed to comply with all the observer regulations per 50 CFR 635.7 will also not be considered. Exceptions will be made for vessels that were selected for HMS observer coverage but did not fish in the quarter when selected and thus did not require an observer. Applicants who do not possess a valid USCG safety inspection decal when the application is submitted will not be considered. Applicants who have been non-compliant with any of the HMS observer program regulations in the previous 2 years, as described above, may be eligible for future participation in shark research fishery activities by demonstrating 2 subsequent years of compliance with observer regulations at 50 CFR 635.7.

Selection Process

The HMS Management Division will review all submitted applications and develop a list of qualified applicants

from those applications that are deemed complete. A qualified applicant is an applicant that has submitted a complete application by the deadline (see **DATES**) and has met the selection criteria listed above. Qualified applicants are eligible to be selected to participate in the shark research fishery for 2015. The HMS Management Division will provide the list of qualified applicants without identifying information to the SEFSC. The SEFSC will then evaluate the list of qualified applicants and, based on the temporal and spatial needs of the research objectives, the availability of observers, the availability of qualified applicants, and the available quota for a given year, will randomly select qualified applicants to conduct the prescribed research. Where there are multiple qualified applicants that meet the criteria, permittees will be randomly selected through a lottery system. If a public meeting is deemed necessary, NMFS will announce details of a public selection meeting in a subsequent **Federal Register** notice.

Once the selection process is complete, NMFS will notify the selected applicants and issue the shark research fishery permits. The shark research fishery permits will be valid only in calendar year 2015. If needed, NMFS will communicate with the shark research fishery permit holders to arrange a captain's meeting to discuss the research objectives and protocols. NMFS held mandatory captain's meetings before observers were placed on vessels in both 2013 (78 FR 14515; March 6, 2013) and 2014 (79 FR 12155; March 4, 2014) and expects to hold one again in 2015. Once the fishery starts, the shark research fishery permit holders must contact the NMFS observer coordinator to arrange the placement of a NMFS-approved observer for each shark research trip.

A shark research fishery permit will only be valid for the vessel and owner(s) and terms and conditions listed on the permit, and, thus, cannot be transferred to another vessel or owner(s). Issuance of a shark research permit does not guarantee that the permit holder will be assigned a NMFS-approved observer on any particular trip. Rather, issuance indicates that a vessel may be issued a NMFS-approved observer for a particular trip, and on such trips, may be allowed to harvest Atlantic sharks, including sandbar sharks, in excess of the retention limits described in 50 CFR 635.24(a). These retention limits will be based on available quota, number of vessels participating in the 2015 shark research fishery, the research objectives set forth by the shark board, the extent of other restrictions placed on the vessel, and may vary by vessel and/or location. When not operating under the auspices of the shark research fishery, the vessel would still be able to land LCS, SCS, and pelagic sharks subject to existing retention limits on trips without a NMFS-approved observer.

NMFS annually invites commercial shark permit holders (directed and incidental) to submit an application to participate in the shark research fishery. Permit applications can be found on the HMS Management Division's Web site at *http://www.nmfs.noaa.gov/sfa/hms/index.htm* or by calling (301) 427–8503. Final decisions on the issuance of a shark research fishery permit will depend on the submission of all required information by the deadline (see **DATES**), and NMFS' review of applicant information as outlined above. The 2015 shark research fishery will start after the opening of the shark fishery and under available quotas as published in a separate **Federal Register** final rule.

Dated: October 28, 2014.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–25957 Filed 10–30–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD597

New England Fishery Management Council (NEFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 4-day meeting to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held Monday through Thursday, November 17–20, 2014. The Monday session will begin at 1 p.m., while the next three days will start at 8:30 a.m.

ADDRESSES: The meeting will be held at the Marriott Hotel, 25 America's Cup Avenue, Newport, RI 02840; telephone: (401) 849–1000 and fax: (401) 849–3422. For online information about the venue *www.marriott.com/hotels/hotel-information/travel/pvdlw-newport-marriott/.*

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Counci; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Monday, November 17, 2014

The Council meeting will begin with introductions, and brief reports from the NEFMC Chairman and Executive Director, the NOAA Fisheries Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel and NOAA Law Enforcement, and representatives of the Atlantic States Marine Fisheries Commission and U.S. Coast Guard. Immediately after these reports, the Council will provide an opportunity for the public to present brief comments on items that are relevant to Council business but are otherwise not listed on the published agenda. The Monkfish Committee will update members on the development of alternatives for inclusion in Amendment 6 to the Monkfish Fishery Management Plan (FMP) and possibly the necessity of initiating a framework adjustment to expedite the implementation of several measures previously included in Amendment 6. The Council staff will present the annual monitoring report on the Northeast Skate Complex FMP and the day will end with a report from the Small Mesh Multispecies (Whiting) Committee. The committee will recommend approval of the 2015–17 specifications for the small-mesh multispecies (whiting) fishery. Although the formal Council meeting will adjourn, staff from the Greater Atlantic Regional Fisheries Office will present an overview and discuss the office's Strategic Plan at 5:45 p.m. or immediately following the conclusion of the Council's meeting.

Tuesday, November 18, 2014

The day will begin with an overview and summary of public comments on a NOAA/NMFS-led action that will affect all federally managed fisheries in the Northeast. The Council then intends to take final action on what is called the Vessel Baseline Omnibus Amendment. During this same morning session, the Council also expects to approve alternatives to be considered for inclusion in Amendment 18 to the Northeast Multispecies or Groundfish FMP. The discussion will focus on accumulation limits and an inshore/

offshore line to address the concentration of fishing effort in the inshore Gulf of Maine. Next, the Scientific and Statistical Committee will report on its recommendations for overfishing limits and acceptable biological catch recommendations for Gulf of Maine cod, pollock, Gulf of Maine winter flounder, and Georges Bank winter flounder. Following a lunch break, the rest of the day will be spent reviewing and taking final action on Framework Adjustment 53 to the Groundfish FMP. The framework addresses three major topics: (1) Status changes (Gulf of Maine (GOM) haddock) and specifications for several groundfish stocks (Gulf of Maine cod and haddock; Gulf of Maine and Georges Bank winter flounder; pollock; and Georges Bank yellowtail flounder); (2) windowpane flounder sub-annual catch limit (ACLs) for sectors, common pool; and the sea scallop fishery; and (3) other management measures, including additional spatial protection for spawning Gulf of Maine cod, and possibly additional measures for that stock, a roll-over provision for fishery specifications, and annual catch entitlement carryover provisions for sectors.

Wednesday, November 19, 2014

The Council intends to use this day to complete its work on Framework Adjustment 53.

Thursday, November 20, 2014

The final day of the Council's meeting will begin with a report from its Sea Scallop Committee. Based on the committee's recommendations, the Council expects to take final action on Framework Adjustment 26 to the Atlantic Sea Scallop FMP. The action includes fishery specifications for 2015 and default measures for 2016, including days-at-sea allocations, access area allocations and limited access general category fishery allocations. A number of other issues are under consideration for inclusion in the action. Prior to a lunch break, the NEFMC will begin a final round of discussions and approve its management priorities for 2015. The Risk Policy Working Group will ask for approval of a draft policy statement and briefly discuss steps to apply the policy across all NEFMC fishery management plans. Finally, the Observer Committee will provide an update on the development of an Omnibus Industry-Funded Monitoring Amendment request approval of alternatives for inclusion in the action. The meeting will adjourn once any other outstanding business has been addressed.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: October 28, 2014.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–25927 Filed 10–30–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD598

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council's Gulf of Alaska (GOA) and Bering Sea/Aleutian Islands (BSAI) Groundfish Plan Teams will meet in Seattle, WA.

DATES: The meetings will be held November 17–21, 2014. The meetings will begin at 9 a.m., November 17, and continue through Friday November 21, 2014.

ADDRESSES: The meetings will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way NE., Building 4, NMML Room 2039 (GOA Plan Team) and Traynor Room 2076 (BS/AI Plan Team), Seattle, WA.

Council Address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Diana Stram, NPFMC; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Plan Teams will compile and review the annual Groundfish Stock Assessment and Fishery Evaluation (SAFE) reports, (including the Economic Report, the Ecosystems Consideration Chapter, and the stock assessments for BSAI and GOA groundfishes), and recommend final groundfish harvest specifications for 2015/16.

The Agenda is subject to change, and the latest version will be posted at *http://www.alaskafisheries.noaa.gov/npfmc/*.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: October 28, 2014.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–25928 Filed 10–30–14; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds products to the Procurement List that will be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 12/1/2014

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Patricia Briscoe, Telephone: (703) 603–

7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 6/13/2014 (79 FR 33911–33912), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agency to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the products listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entity other than the small organization that will furnish the products to the Government.

2. The action will result in authorizing a small entity to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products are added to the Procurement List:

Products

NSN: 7510–00–NSH–0211—Toner Cartridge, Remanufactured, Lexmark Optra T620/T622 Series Compatible
NSN: 7510–00–NSH–1013—Toner Cartridge, Remanufactured, Lexmark E350/E352 Series Compatible
NSN: 7510–00–NSH–1014—Toner Cartridge, Remanufactured, Lexmark E450 Series Compatible
NSN: 7510–00–NSH–1051—Toner Cartridge, Remanufactured, Lexmark E230/E232/E234/E330/E332/E340/E342 Series Compatible
NSN: 7510–00–NSH–1208—Kit, Maintenance, Remanufactured, Toner Cartridge, Lexmark T620/620N Series Compatible
NPA: TRI Industries NFP, Chicago, IL
Contracting Activity: General Services Administration, New York, NY
Coverage: A-List for the Total Government Requirement as aggregated by the General Services Administration, New York, NY.

Patricia Briscoe,

Deputy Director, Business Operations, (Pricing and Information Management).

[FR Doc. 2014–25929 Filed 10–30–14; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Addition to the Procurement List.

SUMMARY: The Committee is proposing to add a product to the Procurement List that will be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

DATES: *Comments Must Be Received on Or Before:* 12/1/2014.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed action.

Addition

If the Committee approves the proposed addition, the entity of the Federal Government identified in this notice will be required to procure the product listed below from the nonprofit agency employing persons who are blind or have other severe disabilities.

The following product is proposed for addition to the Procurement List for production by the nonprofit agency listed:

Product

NSN: 8520–01–432–2618—Hand Soap, Liquid, Biobased
NPA: The Lighthouse for the Blind, St. Louis, MO
Contracting Activity: General Services Administration, Fort Worth, TX
Coverage: A-List for the Total Government Requirement as aggregated by the General Services Administration, Fort Worth, TX.

Patricia Briscoe,

Deputy Director, Business Operations, (Pricing and Information Management).

[FR Doc. 2014–25930 Filed 10–30–14; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Piñon Canyon Maneuver Site Training and Operations Environmental Impact Statement

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the availability of the draft Environmental Impact Statement (EIS) for proposed training and operations at Piñon Canyon Maneuver Site (PCMS), CO. PCMS is the maneuver site for Fort Carson and is located near Trinidad, CO, approximately 150 miles southeast of Fort Carson. The draft EIS evaluates the environmental impacts associated with the proposed action, which is to conduct realistic, coordinated, large-scale training that integrates the ground and air resources of Fort Carson's mechanized, infantry, support, and combat aviation units.

In addition to the No Action Alternative, the draft EIS considers the two alternatives: Alternative 1A—would establish and use new brigade-level training intensity measures; update brigade training period equipment compositions and training methods relative to the 1980 Final EIS for the PCMS Training Land Acquisition; and enable the Stryker family of vehicles to train at PCMS. Alternative 1B—would include Alternative 1A and add enhanced readiness training using new training activity and infrastructure components at PCMS. Alternative 1B infrastructure components include airspace reclassification and drop zone development. The proposed action is composed of numerous components and the decision-maker may elect not to select every component. The proposed action does not include, nor would it require, expansion of PCMS.

ADDRESSES: Written comments 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) 526–7525, 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 draft EIS has been prepared to meet the requirements of the National Environmental Policy Act of 1969 (NEPA) to evaluate the environmental and socioeconomic impacts of implementing proposed actions at PCMS.

Soldiers stationed at Fort Carson need to train together, in an integrated manner, during large-scale collective training events. Integrated brigade combat team (BCT) level training is necessary at PCMS; without such training, Fort Carson Soldiers would be forced to train in their tasks in isolation, and not in the integrated manner in which they would fight. The draft EIS affords Fort Carson the opportunity to review its environmental program and the current state of the environment on PCMS, and decide on how best to structure training events for the recently reconfigured Armor and Infantry BCTs and the Stryker BCT.

Alternative 1A would establish a benchmark for brigade-level training intensity. The historic limitation of 4.7 months of brigade-level mechanized maneuver would remain in effect to allow for land rest and recovery. This alternative would enable the ¼ Stryker BCT to conduct training at PCMS using the Stryker family of vehicles.

Alternative 1B includes Alternative 1A and new training activities and training infrastructure changes at PCMS. Training activities include non-explosive aviation gunnery, flare, electronic jamming systems, laser target sighting, tactical demolition, unmanned and unarmed aerial reconnaissance systems, and light unmanned ground vehicle training. In terms of training infrastructure, PCMS would establish two new drop-zones and, for use during periods when training activity poses a hazard to aircraft, restricted airspace directly over PCMS. The restricted airspace would be established up to 10,000 feet above mean sea level, and activated as required by training scenarios. The decision-maker may select all of these elements or only some.

Environmental impacts associated with the implementation of the proposed action could include significant impacts to soils as a result of maneuvering with tracked and wheeled vehicles on fragile soils; vegetation and wildlife as a result of large maneuver corridors, which could potentially result in a conversion or net loss of habitat, depending upon frequency of use and recovery time; and water resources as a result of increased sedimentation in nearby impaired waters. Impacts in the areas of airspace, cultural resources, facilities and utilities, hazardous materials, hazardous waste, and toxic substances, socioeconomics, and traffic and transportation were all determined to be less than significant. The draft EIS identifies potential mitigation measures to reduce adverse impacts.

Soldier training would be entirely within the existing boundaries of PCMS, except for limited air and convoy operations. The proposed action does not include, nor would it require, any expansion of PCMS. No additional land will be sought or acquired as a result of this action.

Under the No Action Alternative, the Army would continue current mission activities and training operations, which includes authorized brigade-level training, as well as range use and training land management.

Cooperating Agencies: The Federal Aviation Administration is a cooperating agency on the Draft EIS as the proposed action includes airspace reclassification.

Public Meeting and Public Comments: A public meeting on the Draft EIS will be held at PCMS. Information on the date and time for the public meeting will be published locally.

Federally recognized Tribes, federal, state, and local agencies, organizations, and the public are invited to be involved in the process for the preparation of this EIS by participating in public meetings and/or submitting written comments on the Draft EIS to (see **ADDRESSES**) no later than 45 days from the publication of the Notice of Availability in the **Federal Register**.

The Draft EIS is available at *http://www.carson.army.mil/DPW/nepa.html.*

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2014–25786 Filed 10–30–14; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Education Advisory Subcommittee Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open Subcommittee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the Department of the Army Historical Advisory Subcommittee (DAHASC), a subcommittee of the Army Education Advisory Committee. This meeting is open to the public.

DATES: The Department of the Army Historical Advisory Subcommittee will meet from 8:40 a.m. to 3:30 p.m. on November 20, 2014.

ADDRESSES: Department of the Army Historical Advisory Subcommittee, U.S. Army Center of Military History, 102 4th Ave., Bldg. 35, Washington, DC 20319–5060.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen W. Lehman, the Alternate Designated Federal Officer for the subcommittee, in writing at ATTN: AAMH–ZC, U.S. Army Center of Military History, 102 4th Ave., Bldg. 35, Fort McNair, Washington, DC 20319–5060 by email at *stephen.w.lehman2.civ@mail.mil* or by telephone at (202) 685–2314.

SUPPLEMENTARY INFORMATION: The subcommittee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to review and approve the 2014 Army Historical Program Report.

Proposed Agenda: The committee is chartered to provide independent advice and recommendations to the Secretary of the Army on the educational, doctrinal, and research policies and activities of U.S. Army educational programs. At this meeting the subcommittee will review the 2014 Army Historical Program Report and the conformity of the Army's historical work and methods with professional standards. The subcommittee will also discuss ways to increase cooperation between the historical and military professions in advancing the purpose of the Army Historical Program, and the furtherance of the mission of the U.S. Army Center of Military History to promote the study and use of military history in both civilian and military Schools.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Seating is on a first to arrive basis. Attendees are requested to submit their name, affiliation, and daytime phone number seven business days

their name, affiliation, and daytime phone number seven business days prior to the meeting to Mr. Lehman, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public attending the committee meetings will not be permitted to present questions from the floor or speak to any issue under consideration by the committee. Because the meeting of the committee will be held in a Federal Government facility on a military post, security screening is required. A photo ID is required to enter post. Please note that security and gate guards have the right to inspect vehicles and persons seeking to enter and exit the installation. The U.S. Army Center of Military History is fully handicapped accessible. Wheelchair access is available in front at the main entrance of the building. For additional information about public access procedures, contact Mr. Lehman, the committee's Alternate Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the committee, in response to the stated agenda of the open meeting or in regard to the committee's mission in general. Written comments or statements should be submitted to Mr. Stephen W. Lehman, the committee Alternate Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Alternate Designated Federal Official at least seven business days prior to the meeting to be considered by the committee. The Alternate Designated Federal Official will review all timely submitted written comments or statements with the committee Chairperson, and ensure the comments are provided to all members of the committee before the meeting. Written comments or statements received after this date may not be provided to the committee until its next meeting. Members of the public will be permitted to make verbal comments during the Committee meeting only at the time and in the manner described below. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least seven (7) days in advance to the Committee's Alternate Designated Federal Official, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. The Alternate Designated Federal Official will log each request, in the order received, and in consultation with the committee Chairperson determine whether the subject matter of each comment is relevant to the Committee's mission and/or the topics to be addressed in this public meeting. A 15-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described above, will be allotted no more than three (3) minutes during the period, and will be invited to speak in the order in which their requests were received by the Alternate Designated Federal Official.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2014–25787 Filed 10–30–14; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Intent To Prepare an Environment Impact Statement for the Proposed Mississippi River Reintroduction Into the Maurepas Swamp Diversion Project, Near Garyville, Louisiana, in St. John the Baptist, St. James, and Ascension Parishes

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE), New Orleans District intends to prepare an Environmental Impact Statement (EIS) to inform a decision on a Department of the Army (DA) permit application pursuant to Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act, and permissions request under 33 U.S.C. 408, submitted by the Coastal Protection and Restoration Authority of Louisiana (CPRA) for the Mississippi River Reintroduction into the Maurepas Swamp (MRRMS) freshwater diversion project (proposed project). The USACE has determined the proposed project will result in significant impacts to the human environment, therefore an EIS is necessary to ensure compliance with the National Environmental Policy Act (NEPA) and as a basis for both the permit decision and the Section 408 permissions.

The DA permit and the 408 permissions are two separate processes with different authorities analyzed by different mission areas (including Regulatory and Civil Works) inside the USACE. Under Section 404 of the CWA and Section 10 of the Rivers and Harbors Act, the District Engineer permits the discharge of dredged or fill material into the waters of the United States as well as work, to include the installation and maintenance of structures, in navigable waters of the U.S., if the discharge meets the requirements of the Environmental Protection Agency's 404(b)(1) guidelines, and the proposal is determined to not be contrary to the overall public interest. Under 33 U.S.C. 408, the Chief of Engineers grants permission to alter, modify, or impair an existing USACE project if it is not injurious to the public interest and does not impair the usefulness of such work. The proposed project involves structural crossings of the Federal Mississippi River and Tributaries (MR&T) Levee and could potentially impact the Mississippi River Navigation Channel, the future footprint of the Federal West Shore Lake Pontchartrain Hurricane and Storm Damage Risk Reduction System levee project as well as other Federal projects. USACE Regulatory and Civil Works will coordinate on all aspects of the production of the EIS.

ADDRESSES: Please send written comments to Kenny Blanke, U.S. Army Corps of Engineers, New Orleans District, Regulatory Branch (CEMVN–OD–SC), P.O. Box 60267, New Orleans, LA 70160 or by email at *CEMVN-Maurepas@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Questions about the DA permit, project and EIS should be directed to: Mr. Kenny Blanke at (504) 862–1217, or the email above. Questions on the 408 permissions should be directed to: Mr. Nathan Dayan at (504) 862–2530 or at the email above.

SUPPLEMENTARY INFORMATION:

1. *Authority:* Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403); Section 14 of the Rivers and Harbors Act of 1899 (33 U.S.C. 408); Section 404 of the Clean Water Act (33 U.S.C. 1344);

and, Section 102 of the National Environmental Policy Act (42 U.S.C. 4332).

2. *Proposed Project.* The USACE will prepare an EIS to analyze the impacts of diverting sediment/nutrient laden Mississippi River water into the southern Maurepas Swamp. CPRA has stated that the proposed project purpose is to restore portions of the southern Maurepas Swamp that are degrading due to cypress-tupelo stress and loss by addressing the existing conditions of subsidence, permanent flooding, salt stress, and sediment/nutrient starvation. The proposed project is located along the left descending bank of the Mississippi River at approximate river mile 144, in St. John the Baptist Parish, LA. The proposed project entails the construction of an intake channel that would be excavated in the Mississippi River batture, a gated structure to be built through the Mississippi River federal levee, and three (3) 10-foot x 10-foot culverts to be installed to convey river water under the levee and LA Highway 44. The culverts would then discharge into a sand settling basin, connected to an approximate 5.5-mile long banked conveyance channel which would divert flow northerly to Hope Canal and into the Maurepas Swamp. The diversion channel has proposed culvert crossings at its intersection with the existing Canadian National Railway and the Kansas City Southern Railway, as well as US Highway 61. North of US Highway 61, the channel would then follow the existing Hope Canal alignment to finally distribute the diverted water into the forested wetlands approximately 1,000 feet north of Interstate 10. Other ancillary features of this project include the construction of a drainage pumping station at the confluence of Hope Canal and Bourgeois Canals to maintain the existing storm water drainage capacity for the community of Garyville, Louisiana, the relocation/construction of a new Hope Canal public boat launch, the installation of rock weirs at the Blind River, Bourgeois Canal, Bayou Secret, the creation of five (5) cuts in the abandoned railroad embankment north of Interstate 10 and east of the Blind River, and the installation of ten (10) check valves along the north side of Interstate 10 on the existing culverts under the interstate. Four (4) lateral relief valves are proposed to be constructed off the water conveyance channel, north of the proposed pumping station and south of Interstate 10, each having two (2) 24-inch metal pipes with 24-inch knife gate valves to divert water to the west and east of the proposed channel into the Maurepas Swamp.

USACE Regulatory prepared an Environmental Assessment (EA) that documented potential direct, secondary, and cumulative effects the proposed project would have on the social, physical, and natural environments of the project area. Information used in the preparation of the EA was developed by the applicant and/or independently by the USACE. In summary, the proposed project would have the potential for direct adverse impacts of approximately ±140 acres of jurisdictional wetlands and ±20 acres of jurisdictional ''Other Waters of the U.S.'' In addition, CPRA has stated that the proposed project would provide a direct restoration benefit to approximately 36,120 acres of forested freshwater swamp habitat as a result of project implementation. USACE Regulatory concluded that the proposed project will result in significant impacts to the human environment. The National Environmental Policy Act (NEPA) requires the preparation of an EIS for proposals that are subject to federal funding, control, responsibility, and permitting, and which have the potential for significant impacts.

3. *Alternatives.* The EIS will include an evaluation of a reasonable range of alternatives. Currently, the following alternatives are expected to be analyzed in detail: The ''no-build'' alternative (no permit issued), the applicant's preferred project (proposed project), and other alternatives that will address an array of conveyance and delivery of fresh water, nutrients, and sediment from the Mississippi River to help reverse and improve the viability of the southern Maurepas Swamp. Some alternatives may be brought forward from existing studies and projects including the Coastal Wetlands Planning, Protection and Restoration Act (CWPPRA) Program, Louisiana Coastal Area (LCA) Ecosystem Restoration Study, the 2012 Louisiana Coastal Master Plan, and other alternatives may be developed through the NEPA scoping process.

4. *Scoping.* Scoping is the process utilized for determining the range of alternatives and significant issues to be addressed in the EIS. The USACE invites full public participation to promote open communication on the issues surrounding the proposed project. All Federal, state, and local agencies, NGOs, and other persons or organizations that have an interest are urged to participate in the NEPA scoping process. A public meeting will be held to present information to the public, to help identify significant issues and to receive public input and comment into the scoping process. Public scoping meetings for both processes will be conducted jointly. The date, time and location of the scoping meeting have not been determined. The public will be notified of the scoping meeting information by separate public notice posted on the New Orleans District Web page (listed below). The dates, times and locations of the scoping meeting will be determined in conjunction with CPRA at a later date and announced through local media channels as well as the Regulatory public notice Web site: *http://www.mvn.usace.army.mil/Missions/Regulatory/PublicNotices.aspx.* The USACE' scoping process for the EIS includes a public involvement program with several opportunities to provide oral and written comments. In addition to public meetings and notifications in the **Federal Register**, the USACE will issue public notices when the draft and final EISs are available. Affected federal, state, and local agencies, Native American tribes, and other interested private organizations and parties are invited to participate.

5. *Significant issues.* The EIS will analyze the potential social, economic, and natural environmental impacts to the local area resulting from the proposed project. Important resources and issues that will be evaluated in the EIS could include, but would not be limited to, effects on wetlands and other waters of the U.S.; aquatic resources; drainage patterns; air quality; water quality; suspended particulates/turbidity; flood control functions; special aquatic sites; fish and wildlife habitat; threatened and endangered species and critical habitat; biological availability of possible contaminants; floodplain use; aesthetics; traffic/transportation patterns; land use changes; public safety; economics; noise; consideration of private property; commercial and recreational fisheries; cultural resources; alternatives; secondary and cumulative impacts; and environmental justice (effect on minorities and low income populations). Socioeconomic issues include: Navigation; induced flooding; land use; property values; tax revenues; population and housing, community and regional growth; community cohesion; public services, recreation, utilities and community service systems and cumulative effects of related projects in the study area.

6. *Environmental Consultation and Review.* The U.S. Fish and Wildlife Service (Service) will assist in documenting existing conditions and assessing effects of project alternatives through the Fish and Wildlife

Coordination Act consultation procedures. Other environmental review and consulation requirements for the proposed project include the need for the applicant to obtain water quality certification under Section 401 of the Clean Water Act from the Louisiana Department of Environmental Quality. In addition, because the proposed project may affect federally listed species, the USACE will consult with the Service and the National Marine Fisheries Service (NMFS) in accordance with Section 7 of the Federal Endangered Species Act. The NMFS will be consulted regarding the effects of this proposed project on Essential Fish Habitat per the Magnuson-Stevens Act. The USACE will also be consulting with the State Historic Preservation Officer under 106 of the National Historic Preservation Act concerning properties listed, or potentially eligible for listing.

The USACE will serve as the lead Federal agency in the preparation of the EIS. Other federal and/or state agencies may participate as cooperating and/or commenting agencies throughout the EIS process.

The USACE will use a ''third party contractor'' to prepare all or part of the EIS or to obtain required information (40 CFR 1500–1508). ''Third party contract'' refers to the preparation of the EIS by a contractor paid by the applicant but who is selected and supervised directly by the district engineer. Contractor election by the USACE for a Regulatory Program EIS will be as follows: The USACE will select from the applicant's list the first contractor that is fully acceptable to the USACE, using the applicant's order of preference; this selection is finalized by the applicant's selection of the same contractor. The procedures outlined in 40 CFR 1500–1508 and CEQ's forty questions must be followed. Furthermore, the USACE is responsible for final acceptance of the draft and final EIS.

7. Availability. The Draft EIS (DEIS) is expected to be available for public comment and review no sooner than the spring of 2016. At that time, a 45-day public review period will be provided for individuals and agencies to review and comment on the DEIS. All interested parties are encouraged to respond to this notice and provide a current address if they wish to be notified of the DEIS circulation.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2014–25869 Filed 10–30–14; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD14–11–000]

Proposed Agency Information Collection

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(1)(D), the Federal Energy Regulatory Commission (Commission or FERC) is submitting the information collection in Docket No. RD14–11–000 to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the **Federal Register** (79 FR 46781, 8/11/2014) requesting public comments. FERC received no comments in response to that notice and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by December 1, 2014.

ADDRESSES: Comments filed with OMB, regarding FERC–725A (OMB Control Number 1902–0244) and FERC–725X (OMB Control Number TBD), should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–4718.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission, identified by the Docket No. RD14–11–000, by either of the following methods:

- eFiling at Commission's Web site: *http://www.ferc.gov/docs-filing/efiling.asp.*
- Mail/Hand Delivery/Courier: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The proposed information collection changes in Docket No. RD14–11–000 relate to the proposed Reliability Standards VAR–001–4 (Voltage and Reactive Control) and VAR–002–3 (Generator Operation for Maintaining Network Voltage Schedules), developed by the North American Electric Reliability Corporation (NERC), and submitted to the Commission for approval. The Commission received NERC's petition to approve the proposed Reliability Standards on June 9, 2014.

NERC summarizes the VAR group of standards as follows:

> The Voltage and Reactive (''VAR'') group of Reliability Standards, which consists of two continent-wide Reliability Standards, VAR–001–3 and VAR–002–2b, is designed to maintain voltage stability on the Bulk-Power System, protect transmission, generation, distribution, and customer equipment, and support the reliable operation of the Bulk-Power System.[1]

In its petition, NERC also summarizes the proposed Reliability Standards' applicability and requirements:

> In general, proposed Reliability Standard VAR–001–4 sets forth the requirements applicable to Transmission Operators for scheduling, monitoring, and controlling Reactive Power resources in the Real-time Operations, Same-day Operations, and Operational Planning time horizons to regulate voltage and Reactive Power flows for the reliable operation of the Bulk-Power System. Proposed Reliability Standard VAR–002–3 sets forth the requirements applicable to Generator Operators and Generator Owners for providing the necessary reactive support and voltage control necessary to maintain reliable operations. Generators are the largest and most reliable Reactive Power resource and play an integral role in maintaining voltage stability on the Bulk-Power System. Collectively, the proposed Reliability Standards are designed to prevent voltage instability and voltage collapse on the Bulk-Power System.[2]

Finally, NERC also states that the proposed Reliability Standards improve reliability, clarify requirement language and eliminate redundant or unnecessary requirements.[3]

[1] NERC Petition at 3.

[2] *Id.* at 4.

[3] *Id.* at 15.

Burden Statement: Commission staff analyzed the proposed and currently enforced standards and has concluded that while information collection requirements have been deleted, added, and/or changed, the overall paperwork burden and applicable respondent universe remains unchanged. To improve accounting of the burden, the Commission recognizes that in the transition from VAR–001–3 to VAR–001–4 (requirement R1) there is a decrease in documentation related to policies and procedures. However, the transmission operators are now required to have documentation related to system voltage and reactive power schedules as well as documentation related to coordination with adjacent transmission operators and applicable reliability coordinators. The Commission estimates that this transition leads to a decrease of 160 hours as well as an increase of 160 hours, for a net change of zero. The Commission seeks comment on whether this estimate is accurate.

For the transition from VAR–002–2b to VAR–002–3, the Commission estimates that changes in requirement R1 lead to an increase of 80 hours for recordkeeping and changes in requirement R2 lead to an increase in 120 hours for documentation. However, the Commission estimates a decrease of the same magnitude (200 hours) related to the changes in requirements R3 and R4. The remaining information collection requirements in the two standards remain essentially unchanged.

Based on the above estimates, the Commission intends to submit a total reduction of 204,240 hours from FERC–725A and a total increase of 204,240 hours into FERC–725X, a new collection FERC is using to account for burden related to VAR reliability standards. The following table summarizes the burden changes:

Changes	Number of respondents[4] (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)	Total annual cost[5]
VAR–001–4 Requirement R1 Increase (FERC–725X)	184 (TOP)	1	160	29,440	$1,766,400
VAR–001–4 Requirement R1 Decrease (FERC–725A)	184 (TOP)	1	−160	−29,440	−1,766,400
VAR–002–3 Requirement R1 Increase (FERC–725X)	874 (GOP)	1	80	69,920	4,195,200
VAR–002–3 Requirement R2 Increase (FERC–725X)	874 (GOP)	1	120	104,880	6,292,800
VAR–002–3 Requirements R3 and R4 Decrease (FERC–725A)	874 (GOP)	1	−200	−174,800	−10,488,000
Total				0	0

Dated: October 23, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–25901 Filed 10–30–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6957–002]

City of Portland Water Bureau; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Types of Application:* Surrender of Exemption.

b. *Project No.:* 6957–002.

c. *Date Filed:* October 3, 2014.

d. *Applicant:* City of Portland Water Bureau.

e. *Name of Project:* Mt. Tabor Hydroelectric Project.

f. *Location:* Mt. Tabor Reservoir, in the City of Portland and Multnomah County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Frank Galida, Portland Hydroelectric Project Manager, Portland Water Bureau, 1120 SW. Fifth Avenue, Room 530, Portland, OR 97204, (503) 823–1517.

i. *FERC Contact:* Ms. Rebecca Martin, (202) 502–6012, *Rebecca.martin@ferc.gov*.

j. Deadline for filing comments, motions to intervene, and protests, is November 23, 2014. All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project number (P–6957–002) on any comments, motions, or recommendations filed.

k. *Description of Request:* The applicant proposes to surrender the exemption for the Mt. Tabor Project. The licensee proposes to remove the turbine, generator, and governor. The underground electrical connection to the local power utility would be disconnected. No ground disturbing activities are proposed.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or

[4] TOP = Transmission Operator, GOP = Generator Operator.

[5] The estimate for cost per hour (rounded to the nearest dollar) is derived as follows:

• $61/hour, the average salary plus benefits (representing 30.1% of the total compensation) per engineer (from Bureau of Labor Statistics at *http://bls.gov/oes/current/naics3_221000.htm.* and *http://www.bls.gov/news.release/ecec.nr0.htm.*

email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 211, 214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene or protests should relate to project works which are the subject of the license amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: October 23, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–25900 Filed 10–30–14; 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: ER10–2179–024*; ER10–2181–024; ER10–2182–024.*

Applicants: Calvert Cliffs Nuclear Power Plant, LLC, Nine Mile Point Nuclear Station, LLC, R.E. Ginna Nuclear Power Plant, LLC.

Description: Notice of Non-material Change in Status of the CENG Nuclear Entities.

Filed Date: 10/23/14.

Accession Number: 20141023–5173.

Comments Due: 5 p.m. ET 11/13/14.

Docket Numbers: ER14–1221–001.

Applicants: PJM Interconnection, L.L.C.

Description: Compliance filing per 35: Compliance Filling, First Revised Service Agreement No. 3752 to be effective 12/31/2013.

Filed Date: 10/24/14.

Accession Number: 20141024–5066.

Comments Due: 5 p.m. ET 11/14/14.

Docket Numbers: ER14–2430–002.

Applicants: Arizona Public Service Company.

Description: Tariff Amendment per 35.17(b): Response to Hyder Deficiency Letter dated 9/23/14 to be effective 8/13/2014.

Filed Date: 10/24/14.

Accession Number: 20141024–5076.

Comments Due: 5 p.m. ET 11/14/14.

Docket Numbers: ER14–2563–001.

Applicants: Tucson Electric Power Company.

Description: Compliance filing per 35: Additional Changes to Order No. 792 Compliance Filing to be effective 8/4/2014.

Filed Date: 10/24/14.

Accession Number: 20141024–5069.

Comments Due: 5 p.m. ET 11/14/14.

Docket Numbers: ER14–2564–001.

Applicants: UNS Electric, Inc.

Description: Compliance filing per 35: Additional Changes to Order No. 792 Compliance Filing to be effective 8/4/2014.

Filed Date: 10/24/14.

Accession Number: 20141024–5075.

Comments Due: 5 p.m. ET 11/14/14.

Docket Numbers: ER14–2939–001.

Applicants: Imperial Valley Solar Company (IVSC) 2, LLC.

Description: Tariff Amendment per 35.17(b): Amendment to Initial Market-Based Rate Application to be effective 11/24/2014.

Filed Date: 10/24/14.

Accession Number: 20141024–5122.

Comments Due: 5 p.m. ET 11/14/14.

Docket Numbers: ER15–177–000.

Applicants: Southern California Edison Company.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Distribution Service Agreement with Ecos Energy, LLC for Utah-Mesa Solar Project to be effective 12/24/2014.

Filed Date: 10/24/14.

Accession Number: 20141024–5002.

Comments Due: 5 p.m. ET 11/14/14.

Docket Numbers: ER15–178–000.

Applicants: Southern California Edison Company.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): Distribution Serv Agmt with Ecos Energy, LLC for Shoshone Valley Solar Project to be effective 12/24/2014.

Filed Date: 10/24/14.

Accession Number: 20141024–5003.

Comments Due: 5 p.m. ET 11/14/14.

Docket Numbers: ER15–179–000.

Applicants: Nevada Power Company.

Description: Baseline eTariff Filing per 35.1: NV Energy OATT Relocation—NPC OATT & Service Agreements to be effective 11/1/2014.

Filed Date: 10/24/14.

Accession Number: 20141024–5048.

Comments Due: 5 p.m. ET 11/14/14.

Docket Numbers: ER15–180–000.

Applicants: Nevada Power Company.

Description: Tariff Withdrawal per 35.15: NV Energy OATT Relocation' Cancellation of NPC–NVE Concurrence to be effective 11/1/2014.

Filed Date: 10/24/14.

Accession Number: 20141024–5052.

Comments Due: 5 p.m. ET 11/14/14.

Docket Numbers: ER15–181–000.

Applicants: Sierra Pacific Power Company.

Description: Tariff Withdrawal per 35.15: NV Energy OATT Relocation' Cancellation of SPPC–NVE Concurrence to be effective 11/1/2014.

Filed Date: 10/24/14.

Accession Number: 20141024–5055.

Comments Due: 5 p.m. ET 11/14/14.

Docket Numbers: ER15–182–000.

Applicants: Sierra Pacific Power Company.

Description: Baseline eTariff Filing per 35.1: NV Energy OATT Relocation—SPPC Concurrence & Service Agreements to be effective 11/1/2014.

Filed Date: 10/24/14.

Accession Number: 20141024–5056.
Comments Due: 5 p.m. ET 11/14/14.

Docket Numbers: ER15–183–000.
Applicants: Nevada Power Company.
Description: Tariff Withdrawal per 35.15: Rate Schedule 122 Collation Correction—Cancel Existing Collation to be effective 11/1/2014.
Filed Date: 10/24/14.
Accession Number: 20141024–5058.
Comments Due: 5 p.m. ET 11/14/14.

Docket Numbers: ER15–184–000.
Applicants: Nevada Power Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Rate Schedule 122 Collation Correction—File With New Collation to be effective 11/1/2014.
Filed Date: 10/24/14.
Accession Number: 20141024–5059.
Comments Due: 5 p.m. ET 11/14/14.

Docket Numbers: ER15–185–000.
Applicants: NV Energy, Inc.
Description: Tariff Withdrawal per 35.15: NV Energy OATT Relocation—Cancellation of NVE Tariff ID to be effective 11/1/2014.
Filed Date: 10/24/14.
Accession Number: 20141024–5060.
Comments Due: 5 p.m. ET 11/14/14.

Docket Numbers: ER15–186–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Rate Schedule No. 217 Exhibit B.LIB and Exhibit B.NGA Revision No. 4 to be effective 12/24/2014.
Filed Date: 10/24/14.
Accession Number: 20141024–5072.
Comments Due: 5 p.m. ET 11/14/14.

Docket Numbers: ER15–187–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): First Revised Service Agreement No. 2367; Queue Z1–088 to be effective 9/25/2014.
Filed Date: 10/24/14.
Accession Number: 20141024–5077.
Comments Due: 5 p.m. ET 11/14/14.

Docket Numbers: ER15–188–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): First Revised Service Agreement No. 2390; Queue Z1–089 to be effective 9/25/2014.
Filed Date: 10/24/14.
Accession Number: 20141024–5083.
Comments Due: 5 p.m. ET 11/14/14.

Docket Numbers: ER15–189–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Original Service Agreement No. 3986; Queue No. W3–099 to be effective 9/24/2014.
Filed Date: 10/24/14.
Accession Number: 20141024–5093.
Comments Due: 5 p.m. ET 11/14/14.

Docket Numbers: ER15–190–000.
Applicants: Duke Energy Renewable Services, LLC.
Description: Baseline eTariff Filing per 35.1: Duke Energy Renewable Services MBR Application to be effective 12/1/2014.
Filed Date: 10/24/14.
Accession Number: 20141024–5094.
Comments Due: 5 p.m. ET 11/14/14.

Docket Numbers: ER15–191–000.
Applicants: Duke Energy Progress, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Depreciation Rate Schedule and PPA Filing to be effective 1/1/2013.
Filed Date: 10/24/14.
Accession Number: 20141024–5125.
Comments Due: 5 p.m. ET 11/14/14.

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: October 24, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–25931 Filed 10–30–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL15–9–000]

Lower Village Hydroelectric Associates (Complainant) v. Public Service Company of New Hampshire (Respondent); Notice of Complaint

Take notice that on October 23, 2014, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 and sections 206 and 306 of the Federal Power Act, Lower Village Hydroelectric Associates (LVA or Complainant) filed a formal complaint against the Public Service Company of New Hampshire (PSNH or Respondent), requesting that the Commission order PSNH to close LVA's air break switch and cease unnecessary interconnection modifications, as more fully explained in the Complaint.

The Complainant certifies that copies of the complaint were served on the contacts for PSNH as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on November 12, 2014.

Dated: October 23, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–25899 Filed 10–30–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF14–20–000]

WBI Energy Wind Ridge Pipeline, LLC; WBI Energy Transmission, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Planned Wind Ridge Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Wind Ridge Pipeline Project involving construction and operation of facilities by WBI Energy Wind Ridge Pipeline, LLC and WBI Energy Transmission, Inc. (Companies) in McIntosh, Logan, LaMoure, and Stutsman Counties, North Dakota. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on November 24, 2014.

You may submit comments in written form or verbally. Further details on how to submit written comments are in the Public Participation section of this notice. In lieu of or in addition to sending written comments, the Commission invites you to attend the public scoping meetings scheduled as follows:

Scoping meeting in Jamestown, ND	Scoping meeting in Wishek, ND
Wednesday, November 19, 2014. 5:30 p.m. local time, Jamestown Knights of Columbus, 519 1st Ave. S., Jamestown, ND 58401.	Thursday, November 20, 2014. 5:30 p.m. local time, Wishek Civic Center, 715 1st Avenue South, Wishek, ND 58492.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Planned Project

The project would consist of:

- Approximately 96 miles of new 20-inch-diameter natural gas pipeline;
- a new 700–1000 horsepower compressor station (Spiritwood Compressor Station) with 8-inch-diameter suction and discharge pipelines;
- two new meter stations;
- valve settings; and
- other appurtenant facilities.

The project would supply approximately 90,000 dekatherms per day of natural gas to a proposed nitrogen fertilizer plant near Spiritwood, North Dakota, with up to an additional 50,000 dekatherms per day of deliverability possible along the Wind Ridge Pipeline and an additional deliverability of up to 35,000 dekatherms per day on WBI Energy Transmission, Inc.'s system. The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the planned facilities would disturb approximately 1,529 acres of land for the aboveground facilities and the pipeline. Following construction, the Companies would maintain about 595 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses. About 6 percent of the planned pipeline route parallels existing pipeline, utility, or road rights-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- endangered and threatened species;
- air quality and noise; and
- public safety.

We will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an application. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

on the EA before we make our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section beginning on page 5.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. Currently, the U.S. Fish and Wildlife Service has expressed its intention to participate as a cooperating agency in the preparation of the EA to satisfy its NEPA responsibilities related to this project.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for Section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the North Dakota State Historic Preservation Office (SHPO), and to solicit the SHPO's views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under Section 106.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the planned facilities and the environmental information provided by the Companies. This preliminary list of issues may change based on your comments and our analysis.

- Existing conservation easements; and
- Agricultural impacts.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before November 24, 2014.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (PF14–20–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You can file your comments electronically using the *eComment* feature located on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the *eFiling* feature located on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

Once the Companies file their application with the Commission, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the project.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (i.e., PF14–20). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: October 23, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–25897 Filed 10–30–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–552–000]

Tennessee Gas Pipeline Company, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Compressor Station 245 Horsepower Replacement Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Compressor Station 245 Horsepower Replacement Project involving construction and operation of facilities by Tennessee Gas Pipeline Company, LLC (TGP) in Herkimer County, New York. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on November 24, 2014.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

TGP provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically asked questions, including how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Summary of the Proposed Project

At its existing Compressor Station 245 in Herkimer County, New York, TGP proposes to:

(1) Abandon in place one existing 3,500 horsepower Worthington ML12 natural gas-fired compressor unit;

(2) retire from active service three existing 1,400 horsepower Worthington UTC natural gas-fired compressor units and retain the units in place for standby use;

(3) install one new 8,219 horsepower Taurus 70 natural gas-fired turbine compressor unit; and

(4) construct a new compressor building and associated facilities to house the new compressor unit.

TGP states that the project would enable TGP to meet New York state nitrogen oxide emission limits, and would improve overall system reliability and flexibility. TGP does not anticipate that its proposal would result in any increase in mainline capacity.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

The project would disturb approximately 25 acres of previously disturbed land entirely owned by TGP within the existing Compressor Station 245 property boundary. Public roads as well as private roads on the existing Compressor Station 245 site would be used for access to proposed construction work areas. New road extensions from existing roads within the compressor station site would be constructed.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- land use;
- water resources;
- cultural resources;
- vegetation, wildlife, and sensitive species;
- air quality and noise; and
- public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section below.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before November 24, 2014.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP14–552–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.''* You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.,* CP14–552). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: October 24, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–25898 Filed 10–30–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP13–499–000; CP13–502–000]

Constitution Pipeline Company, LLC; Iroquois Gas Transmission System, LP; Notice of Availability of the Final Environmental Impact Statement for the Proposed Constitution Pipeline and Wright Interconnect Projects

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (EIS) for the Constitution Pipeline and Wright Interconnect Projects, proposed by Constitution Pipeline Company, LLC (Constitution) and Iroquois Gas Transmission System, L.P. (Iroquois) in the above-referenced dockets. Constitution and Iroquois request authorization to construct and operate certain interstate natural gas pipeline facilities in Pennsylvania and New York to deliver up to 650,000 dekatherms per day of natural gas supply to markets in New York and New England.

The final EIS assesses the potential environmental effects of the construction and operation of the Constitution Pipeline and Wright Interconnect Projects in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed projects, would have some adverse environmental impacts; however, these impacts would be reduced to less-than-significant levels with the implementation of Constitution's and Iroquois' proposed mitigation and the additional measures recommended by staff in the final EIS.

The U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, the Federal Highway Administration, and the New York State Department of Agriculture and Markets participated as cooperating agencies in the preparation of the EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. The U.S. Army Corps of Engineers would adopt the final EIS if, after an independent review of the document, it concludes that its comments and suggestions have been satisfied.

The final EIS addresses the potential environmental effects of the construction and operation of the facilities in Susquehanna County, Pennsylvania and Broome, Chenango,

Otsego, Delaware, and Schoharie Counties, New York. Constitution's project involves 124.4 miles of new 30-inch-diameter natural gas pipeline and appurtenant facilities that include two new meter stations, two pipe interconnections, ten communication towers, eleven mainline valves, and one pig launcher and receiver.[1] Iroquois' project facilities include the addition of 22,000 horsepower of incremental compression and other miscellaneous modifications to its existing Wright Compressor Station.

The FERC staff mailed copies of the EIS to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding. Paper copy versions of this EIS were mailed to those specifically requesting them; all others received a CD version. In addition, the EIS is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Additional information about the projects is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (i.e., CP13–499 or CP13–502). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676; for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: October 24, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–25896 Filed 10–30–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9017–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements Filed 10/20/2014 Through 10/24/2014 Pursuant to 40 CFR 1506.9

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20140310, Final Supplement, USFWS, CA, Coachella Valley Multiple Species Habitat Conservation Plan, Major Amendment, Review Period Ends: 12/01/2014, Contact: Dan Cox 916–414–6539

EIS No. 20140311, Draft EIS, BLM, Multi, Southeastern States Draft Resource Management Plan, Comment Period Ends: 01/29/2015, Contact: Gary Taylor 601–977–5413

EIS No. 20140312, Final EIS, FERC, NY, Constitution Pipeline and Wright Interconnect Projects, Review Period Ends: 12/01/2014, Contact: Kevin Bowman 202–502–6287

EIS No. 20140313, Draft EIS, USA, CO, Pinon Canyon Maneuver Site (PCMS) Training and Operations, Comment Period Ends: 12/15/2014, Contact: Debra Benford 719–526–4666

Dated: October 28, 2014.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2014–25943 Filed 10–30–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update listing of Financial Institutions in liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: October 27, 2014.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10507	The National Republic Bank of Chicago	Chicago	IL	10/24/2014

[1] A pig is an internal tool that can be used to clean and dry a pipeline and/or to inspect it for damage or corrosion.

[FR Doc. 2014–25871 Filed 10–30–14; 8:45 am]
BILLING CODE 6714–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS14–10]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 1104 (b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

Location: Federal Reserve Board—International Square location, 1850 K Street NW., Washington, DC 20006.

Date: November 12, 2014.

Time: 10:30 a.m.

Status: Open.

Reports

Chairman
Executive Director
Delegated State Compliance Reviews
Financial Report
Appraisal Subcommittee Advisory Committee

Action Items

September 10, 2014 minutes—Open Session
FY15 Appraisal Foundation Grant Proposal

How To Attend and Observe an ASC Meeting

If you plan to attend the meeting in person, we ask that you notify the Federal Reserve Board via email at *appraisal-questions@frb.gov,* requesting a return meeting registration email. The Federal Reserve Law Enforcement Unit will then send an email message with a Web link where you may provide your date of birth and social security number through their encrypted system. You may register until close of business November 6, 2014. You will also be asked to provide identifying information, including a valid government-issued photo ID, before being admitted to the meeting. Alternatively, you can contact Kevin Wilson at 202–452–2362 for other registration options. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC meetings.

Dated: October 27, 2014.

James R. Park,

Executive Director.

[FR Doc. 2014–25932 Filed 10–30–14; 8:45 am]
BILLING CODE 6700–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2014–N–12]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 30-day Notice of Submission of Information Collection for Approval from the Office of Management and Budget.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Federal Housing Finance Agency (FHFA) is seeking public comments concerning the information collection known as ''Federal Home Loan Bank Directors,'' which has been assigned control number 2590–0006 by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which is due to expire on October 31, 2014.

DATES: Interested persons may submit comments on or before December 1, 2014.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Housing Finance Agency, Washington, DC 20503, Fax: 202–395–6974, Email: *OIRA_Submisson@omb.eop.gov.* Please also submit comments to FHFA using any one of the following methods:

- *Agency Web site: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by *email* to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024, Attention: Public Comments/Proposed Collection; Comment Request: ''Federal Home Loan Bank Directors (No. 2014–N–12).''

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, email address, and telephone number, on the FHFA Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649–3804.

FOR FURTHER INFORMATION CONTACT: Patricia Sweeney, Management Analyst, Division of Bank Regulation, by email at *Patricia.Sweeney@fhfa.gov* or by telephone at (202) 649–3311; or Eric Raudenbush, Assistant General Counsel, by email at *Eric.Raudenbush@fhfa.gov* or by telephone at (202) 649–3084 (not toll-free numbers); or by regular mail at Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of the Information Collection

Section 7 of the Federal Home Loan Bank Act (Bank Act) vests the management of each Federal Home Loan Bank (Bank) in its board of directors.[1] As required by section 7, each Bank's board comprises two types of directors: (1) Member directors, who are drawn from the officers and directors of member institutions located in the Bank's district and who are elected every four years to represent members in a particular state in that district; and (2) independent directors, who are unaffiliated with any of the Bank's member institutions, but who reside in the Bank's district and are elected every four years on an at-large basis.[2] Section 7 and FHFA's implementing regulation, codified at 12 CFR part 1261, establish the eligibility requirements for both types of Bank directors and the required professional qualifications for independent directors, and set forth the procedures for their election.

Part 1261 of the regulations requires each Bank, as part of its responsibility to administer its annual director election process, to determine the

[1] *See* 12 U.S.C. 1427(a)(1).

[2] *See* 12 U.S.C. 1427(b) and (d).

eligibility of candidates to serve as member and independent directors on its board. Specifically, each Bank must require each candidate for either type of directorship, including any incumbent that may be a candidate for reelection, to complete and return to the Bank a form that solicits information about the candidate's statutory eligibility to serve and, in the case of independent director candidates, about his or her professional qualifications for the directorship being sought.[3] Member director candidates are required to complete the *Federal Home Loan Bank Member Director Eligibility Certification Form* (*Member Director Eligibility Certification Form*), while independent director candidates must complete the *Federal Home Loan Bank Independent Director Application Form* (*Independent Director Application Form*).

Under part 1261, each Bank must also require each of its incumbent directors to certify annually that he or she continues to meet all of the applicable statutory eligibility requirements.[4] Member directors do this by completing the *Member Director Eligibility Certification Form* again every year, while independent directors complete the abbreviated *Federal Home Loan Bank Independent Director Annual Certification Form* (*Independent Director Annual Certification Form*) to certify their ongoing eligibility.

The OMB control number for the information collection is 2590–0006, which is due to expire on October 31, 2014. The likely respondents are individuals who are prospective and incumbent Bank directors. Copies of each of the forms appear at the end of this notice.

B. Burden Estimate

FHFA estimates the total annual hour burden imposed upon respondents by this information collection is 145 hours. This estimate is based on the following calculations:

1. Member Director Eligibility Certification Form

FHFA estimates the total annual hour burden on all member director candidates and incumbent member directors associated with review and completion of the *Member Director Eligibility Certification Form* is 37 hours. This includes a total annual average of 68 member director candidates, with 1 response per individual taking an average of 15 minutes (.25 hours) (68 respondents × .25 hours = 17 hours). It also includes a total annual average of 80 incumbent member directors, with 1 response per individual taking an average of 15 minutes (.25 hours) (80 individuals × .25 hours = 20 hours).

2. Independent Director Application Form

FHFA estimates the total annual hour burden on all independent director candidates associated with review and completion of the *Independent Director Application Form* is 75 hours. This includes a total annual average of 25 independent director candidates, with 1 response per individual taking an average of 3 hours (25 individuals × 3 hours = 75 hours).

3. Independent Director Annual Certification Form

FHFA estimates the total annual hour burden on all incumbent independent directors associated with review and completion of the *Independent Director Annual Certification Form* is 33 hours. This includes a total annual average of 66 incumbent independent directors, with 1 response per individual taking an average of 30 minutes (.5 hours) (66 individuals × .5 hours = 33 hours).

C. Comment Request

1. Comment Received in Response to the Initial Notice

In accordance with the requirements of 5 CFR 1320.8(d), FHFA published a request for public comments regarding this information collection in the **Federal Register** on August 11, 2014. *See* 79 FR 46801 (Aug. 11, 2014). The 60-day comment period closed on October 10, 2014. FHFA received one comment letter, signed jointly by two Members of Congress, that suggested several revisions to the forms and questioned the accuracy of FHFA's burden estimate pertaining to completion of the *Independent Director Application Form.* For the reasons stated below, the agency has decided against making any of the suggested revisions or changing the burden estimate.

Citing the importance of diversity among Bank directors, the commenters suggested that FHFA revise the forms to include questions regarding the gender, race, ethnicity, and geographic location of the respondent. With respect to a respondent's geographic location, the application forms already address that issue by requiring respondents to provide their home and business addresses. With respect to the other three elements, FHFA anticipates obtaining that information through a separate rulemaking. In June 2014 FHFA issued a proposed rule to amend its regulations on Minority and Women Inclusion (MWI), located at 12 CFR part 1207. That proposal would require each Bank annually to request that each member of its board of directors voluntarily provide the Bank with information about his or her minority and gender classification. The Banks would then provide that information, on an aggregate basis and without including personally identifiable information, to FHFA as part of their annual MWI reports to the agency.[5] The comment period for that rulemaking ended on August 25, 2014, and FHFA is in the process of reviewing the comments received and developing a final rule. Because FHFA anticipates having in place another avenue for receiving information about the diversity of Bank boards of directors, it does not believe that it is necessary to collect that same information through the director application forms.

The Bank Act requires that at least two of each Bank's independent directors qualify as ''public interest'' directors—*i.e.,* that they have more than four years of experience representing consumer or community interests on banking services, credit needs, housing, or consumer financial protections.[6] The commenters' second suggested revision relates to question 3 in the ''Statutory Eligibility Requirements'' section of the *Independent Director Application Form,* which asks respondents who are interested in serving as a ''public interest'' director to ''provide information on how you have represented such consumer or community interests for more than four years.'' The commenters suggest that FHFA revise this question to require that each such respondent also be required to specify the ''leadership role'' that the individual has held in a ''mission-driven organization.''

The agency has declined to make this revision for several reasons. First, the principal purpose of the form is to determine whether the respondent satisfies the statutory and regulatory eligibility requirements for being a public interest director. While it has been FHFA's experience that most, if not all, of the Banks' ''public interest'' director candidates have in fact served in a leadership position with a ''mission-driven'' organization, the Bank Act does not require that an individual fulfill the ''public interest'' requirement in this particular manner in order to be

[3] *See* 12 CFR 1261.7(c) and (f); 12 CFR 1261.14(b).

[4] *See* 12 CFR 1261.12.

[5] *See* 79 FR 35960 (June 25, 2014). The proposed rule would also apply to the Bank System's Office of Finance.

[6] *See* 12 U.S.C. 1427(a)(3)(B)(ii).

eligible. If the question were to be revised as suggested, it would then imply that serving in such a position is a necessary means of fulfilling the eligibility requirements and would likely cause confusion among potential applicants about the actual eligibility requirements. Second, FHFA, which reviews the completed form for every individual a Bank proposes to nominate for an independent directorship, is unaware of any instance in recent years in which an applicant responding to question 3 has failed to specify the position or positions he or she held with any organization mentioned therein. In most cases, respondents have provided additional detail as to the duties undertaken while holding those positions. Both the Banks and FHFA review the information provided in order to confirm that the persons actually satisfy the statutory eligibility requirements for the public interest directorships. If an applicant for a ''public interest'' independent directorship did not include such information, it is likely that the Bank, or FHFA, would require the respondent to provide such information before he or she could be considered for the directorship. Finally, question 1 in the ''Selection Criteria'' section of the *Independent Director Application Form* already requests that applicants provide detailed information about their leadership experience, and their responses to that question should provide the Banks and FHFA with information about the leadership roles they have had with any consumer- or community interest-focused organizations.

The commenters' third suggested revision relates to question 2(G) in the ''Selection Criteria'' section of the *Independent Director Application Form,* which is intended to elicit information on experience that the respondent may have that is related to ''the mission of the Banks.'' The question characterizes the Banks' mission as being ''to support the housing finance activities of their members, which includes residential mortgage finance and community and economic development lending activities.'' Noting that ''Congress has consistently defined the [Banks'] mission as serving both housing and community economic development needs of people and their communities,'' the commenters suggest that FHFA revise question 2(G) so that it instead describes the mission of the Banks as being to support the ''housing and community economic development activities of its members.'' There is no specific definition of the Banks' mission. Nonetheless, since its inception in 1932, the principal activity of the Banks has been to support their members' residential housing finance business by providing loans to their members (known as ''advances'') that are secured by the members' assets, most typically other residential mortgage loans. In 1989, Congress further required the Banks to establish Affordable Housing Programs, through which members can support access to housing for persons with lower or moderate incomes, and to support their members' community and economic development activities. Thereafter, the Federal Housing Finance Board, FHFA's predecessor agency as regulator of the Banks, construed the ''housing finance mission'' of the Banks broadly, and to include two elements: Providing support for their members' residential mortgage lending, and providing support for their members' community and economic development activities. FHFA has embraced the view that support for the members' community and economic development activities is a core aspect of the Banks' housing finance mission and believes that the existing language of the form, which explicitly refers to ''community and economic development activities,'' is consistent with that view and need not be changed.

Finally, the commenters assert that FHFA's estimate that it will take a respondent an average of 3 hours to complete the *Independent Director Application Form* is too high and suggest that an estimate of one hour would be more accurate. The commenters argue that the types of individuals being considered for a Bank directorship would be likely to have already prepared similar information for other purposes, which could be drawn upon to reduce the time needed to complete the form. In deciding upon a burden estimate of 3 hours per form, FHFA considered the amount of time it would take an individual completing the form for the first time to: (1) Read through the questions and background information to understand the statutory requirements and the reasoning behind the questions; (2) gather the information requested on the form and any additional materials he or she wishes to provide; (3) prepare narrative answers of sufficient detail to demonstrate his or her eligibility and qualifications to serve; and (4) sign the form and transmit it to the Bank. Undoubtedly, many respondents will have materials at hand containing relevant information that can be readily incorporated into the electronic version of the form, which may reduce the amount of time it will take them to complete the form. It may also be true that an incumbent seeking reelection may require less time to update a previously completed version of the form. Those situations will not necessarily be the case for all respondents, however, because FHFA has observed that a number of applicants still complete the eligibility forms by hand, which takes longer to do. Moreover, in developing its burden estimates for collections of information, it has been the agency's practice to err on the high side and not to assume that all respondents will use the most efficient methods for completing the forms. Because there is no way of knowing what time-saving resources a respondent may be able to draw upon in completing the form, the agency has decided to retain the existing estimate of 3 hours.

2. Further Comments Requested in Response to This Notice

In response to this notice, FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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.

Date: October 27, 2014.

Kevin Winkler,

Chief Information Officer, Federal Housing Finance Agency.

BILLING CODE 8070–01–P

FEDERAL HOME LOAN BANK MEMBER DIRECTOR ELIGIBILITY CERTIFICATION FORM

1. Print or type your full name:

_____

2. Are you a citizen of the United States? Yes ☐ No ☐

3. Provide the address of your principal residence:

Street	City	State	Zip code

4. Provide the following information about the institution you serve as an officer or director that is a member of your Federal Home Loan Bank:

Name of member	Your title or position

Telephone number	Fax number	E-mail address

Street	City	State	Zip code

Mailing address (if different)	City	State	Zip code

5. Provide the name and location of any other institution you serve as an officer or a director that is a member of any Federal Home Loan Bank:

Name of member	City	State	Your title or position

Name of member	City	State	Your title or position

FEDERAL HOME LOAN BANK MEMBER DIRECTOR ELIGIBILITY CERTIFICATION FORM

6. Does each member listed in LINE 4 and LINE 5 comply with all of its applicable minimum capital requirements established by its appropriate federal or state regulator?

Yes ☐ No ☐

If you answered No, identify the non-compliant institution and note the Bank of which it is a member.

Name of member	Bank District
Name of member	Bank District

I HEREBY CERTIFY that the information provided on this Federal Home Loan Bank Member Director Eligibility Certification Form is true, correct, and complete to the best of my knowledge.

Signature _____ Date _____

State of _____)
County of _____)

Signed and sworn to before me this ____ day of _____ of 20___.

_____
Signature of Notary Public

(Notarial Seal)

My commission expires: _____

Expires 10/31/2014
OMB No. 2590-0006

DIRECTIONS

If you need assistance in completing this Form or have any questions, please contact:

Name:
Federal Home Loan Bank of
Address:
Telephone:
Fax:
E-Mail:

Who Must File and When

The Federal Home Loan Bank (Bank) uses the information you provide on this Form to determine whether you meet the statutory and regulatory eligibility requirements to serve as a member director. You can find these requirements in section 1427 of Title 12 of the United States Code (12 U.S.C. § 1427) and in part 1261 of Title 12 of the Code of Federal Regulations (12 C.F.R. part 1261). A copy of the statutory and regulatory eligibility requirements is enclosed for your reference. Only individuals who satisfy these requirements may run for a member directorship or serve as a member director.

Nominees for a Member Bank Directorship

If you wish to accept a nomination to serve as a member director, you must complete this Form and return it to the Bank on or before _____. If you do not submit this Form to the Bank by the deadline, you will be deemed to have declined the nomination.

Incumbent Member Bank Directors

Every year, each incumbent member director must complete this Form and return it to the Bank on or before March 1st. The Bank will use the information to confirm your continued eligibility to serve as a member director. If you do not submit this form by the March 1st deadline, the Bank may declare that you are no longer eligible to serve as a member director, and may declare vacant the member directorship that you hold. If March 1st falls on a Saturday, Sunday, or federal holiday, you have until the next business day to submit the completed Form.

Individuals Selected to Fill a Vacancy

If the Bank selected you to fill a vacancy on the board of directors, you must complete this Form and return it to the Bank on or before _____. You cannot become a member director unless you complete and return the Form to the Bank.

FEDERAL HOME LOAN BANK MEMBER DIRECTOR ELIGIBILITY CERTIFICATION FORM: DIRECTIONS

Line-by-Line Instructions

LINE 1. Print or type your full name.

LINE 2. You must be a United States citizen in order to serve as a member director. Check the appropriate answer.

LINE 3. Provide the address of your principal residence.

LINE 4. You must be an officer or a director of an institution that is a member of the Bank in order to be a member director of that Bank. In addition, the member must be located in the state within the Bank district that is to be represented by the directorship you wish to hold. In most cases, a member will be deemed to be located where it maintains its home office or its principal place of business. Provide the requested information for the member you serve as an officer or director, as well as your title or position at that institution.

LINE 5. If you are an officer or director of any other institution that is a member of this or any other Bank, provide the name and location of the institution(s), as well as the position that you hold at the institution(s).

LINE 6. In order for you to be eligible to serve as a member director, every institution that you serve as an officer or director that is a member of the Bank in which you wish to hold a directorship must be in compliance with all of its applicable minimum capital requirements established by its appropriate federal or state regulator. The term "appropriate federal regulator" has the same meaning as the term "appropriate Federal banking agency" in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. § 1813(q)) and, for federally insured credit unions, means the National Credit Union Administration. The term "appropriate state regulator" means any state officer, agency, supervisor, or other entity that has regulatory authority over, or is empowered to institute enforcement action against, a member.

Check the appropriate answer as to whether each institution you listed in LINE 4 and LINE 5 is in compliance with all of the applicable minimum capital requirements established by its appropriate federal or state regulator. If the answer is No, you must list each non-compliant institution regardless of the Bank of which it is a member. However, your status as an officer or director of a non-compliant institution will render you ineligible to serve as a Bank director only if that institution is a member of the Bank in which you wish to hold a directorship.

Privacy Act Statement: In accordance with the Privacy Act (5 U.S.C. 552a), the following notice is provided. This information is solicited under authority of 12 U.S.C. 1427(a) and (b); and 12 CFR 1261.5, 1261.7, and 1261.10 to 1261.13. Furnishing the information on this form is voluntary, but failure to do so may result in you not meeting the statutory and regulatory eligibility requirements to serve as a member director. The purpose of this information is to facilitate the timely determination of your eligibility to serve as a member director. Information may be disclosed in accordance with the routine uses identified in FHFA-System of Records Notice FHFA-8 Federal Home Loan Bank Directors, which may be found at http://www.fhfa.gov/webfiles/21534/Notice%20FHFA%20SORs%20FHFA-7%20to%20FHFA-13) published%2076%20FR%2033286%2(6-8-11)%20(2).pdf).

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

FEDERAL HOME LOAN BANK INDEPENDENT DIRECTOR APPLICATION FORM

PERSONAL INFORMATION

Full name:

Address:

Current employment:

Name of organization | **Your title or position**

Telephone number | **Fax number** | **E-mail address**

Street | **City** | **State** | **Zip code**

Mailing address (if different) | **City** | **State** | **Zip code**

STATUTORY ELIGIBLITY REQUIREMENTS

An individual must satisfy certain statutory requirements in order to be eligible for election as an independent director of a Federal Home Loan Bank (Bank). The requirements relate to citizenship, residency, and, for prospective public interest directors, experience in that field. The statute also prohibits an independent director from serving as an officer, employee, or director of an institution that is a member of, or that receives advances from, the Bank on whose board the director serves. The questions below address these statutory requirements.

1. *Citizenship.* Are you a citizen of the United States? Yes ☐ No ☐

2. *Residency.* In order to be an independent director you must be a bona fide resident of a state that is in the geographic district of the Bank on whose board you wish to serve. You will satisfy this requirement if your principal residence is located in that geographic district (A), or if you own or lease a second residence in the district *and* are employed in the district (B). Please indicate the basis you are using to demonstrate bona fide residence.

A. Is your principal residence located in the Bank's geographic district? Yes ☐ No ☐

B. If you answered No, do you own or lease a second residence in the Bank's district *and* are you employed in the district? Yes ☐ No ☐

If so, provide the address of your second home, the name of, and identifying information on, your employer, and your title or position, if different from that on page 1 of this Form.

Second home address:

Employer information:

Name of organization | **Your title or position**

Telephone number | **Fax number** | **E-mail address**

Street | **City** | **State** | **Zip code**

Mailing address (if different) | **City** | **State** | **Zip code**

3. *Public Interest Directors.* If you are seeking election as a public interest director, you must be able to demonstrate that you have more than four years experience representing consumer or community interests on banking services, credit needs, housing, or consumer financial protections.

If you meet this requirement, provide information on how you have represented such consumer or community interests for more than four years.

4. *Conflicts of interest.* Independent directors and their spouses may not serve as an officer of any Bank or as an officer, employee, or director of any member of, or any recipient of advances from, the Bank on whose board the independent director serves. You and your spouse will have to give up any conflicting position before you can become a Bank director.

For purposes of this conflict of interest provision, the terms:

"Member" and "Recipient of advances" include the institution itself and any subsidiary of the institution. If the institution is owned by a holding company, the terms include the holding company if 35 percent or more of the holding company's assets, on a consolidated basis, are attributable to institutions that are members of, or recipients of advances from, the Bank on whose board the independent director serves. Thus, you may not serve as a director, employee, or officer of a holding company if one or more members of, or one or more recipients of advances from, your Bank constitute 35 percent or more of the holding company's assets.

A. Please specify each position you and your spouse have in any member of, or recipient of advances from, the Bank on whose board you would serve.

B. Do you agree to give up positions that are deemed to be conflicting interests before becoming an independent director of that Bank? Yes ☐ No ☐

SELECTION CRITERIA

The Banks are multi-billion dollar financial institutions, the principal business of which is to borrow funds in the capital markets and then provide secured loans to their members. Each Bank is required to have independent directors who possess knowledge or expertise in financial management, derivatives, auditing and accounting, risk management practices, project development, organizational management, or the law.

1. *Leadership Experience.* Bank directors should have experience in senior management or policy-making in one or more fields of business, government, education, or community/civic affairs, and should have a record of achievement in their chosen profession or field of business. This experience should provide directors with the ability to understand the business of the Bank, to act independently, and to ask Bank management appropriate questions about how they are conducting Bank business.

A. If you have ever served as the CEO, CFO, COO, or in a similar capacity for a business enterprise, or as a dean or senior faculty member at a prominent college or university, or as a senior official for a federal or state government or prominent nonprofit organization, please provide the details for those positions, including the dates of service and the positions held.

B. If you have other experience dealing with issues such as developing or implementing business strategies, overseeing regulatory compliance, corporate governance, or board operations, or have previously served on the board of a large business enterprise, please describe those experiences.

C. If you have other significant business or professional achievements that demonstrate your ability to lead an organization please describe them.

2. *Business Knowledge.* Bank directors must be financially literate, meaning they must be familiar with how financial statements and various financial ratios are used in managing a business enterprise, how basic accounting conventions apply to the Bank, and how internal controls are used to manage risk. They also must have some knowledge about one or more of the areas of the Bank's business, such as mortgage finance, capital markets transactions, accounting/modeling practices, affordable housing, community and economic development, and legal and regulatory compliance.

A. Do you know how to read and understand a financial statement, and do you understand how financial ratios and other indices are used for evaluating the performance of a business enterprise? Yes ☐ No ☐

If you answered Yes, please describe the setting in which you gained that knowledge.

B. Do you have a working familiarity with basic finance and accounting practices, including internal controls and risk management? Yes ☐ No ☐

If you answered Yes, please describe the setting in which you acquired that knowledge.

C. Do you have experience with financial accounting and auditing, particularly with a publicly traded company? Yes ☐ No ☐

If you answered Yes, please describe that experience.

D. Do you have experience in project development or organizational management?
Yes ☐ No ☐

If you answered Yes, please describe that experience.

E. Do you have experience in an organization providing financing for residential mortgages, housing for low or moderate income individuals and families, or real estate development?
Yes ☐ No ☐

If you answered Yes, please describe that experience.

F. Have you served in any position that required an understanding of the legal and other fiduciary obligations associated with being an independent director? Yes ☐ No ☐

If you answered Yes, please describe that experience.

G. The mission of the Banks is to support the housing finance activities of their members, which includes residential mortgage finance and community and economic development lending activities. Please describe any prior experience that is related to the mission of the Banks.

3. *Commitment to Service.* In order to serve effectively on the board of a Bank, a director must be able to attend the meetings of the board of directors and subcommittees on which the director serves, and to devote the time necessary to prepare for those meetings.

A. Do you have any other business or professional commitments that would hinder your ability to prepare for and attend board of director and committee meetings? Yes ☐ No ☐

If so, please describe the constraints on your ability to serve.

B. If you serve on any other corporate boards, please provide the name and location of the organization, your role (*e.g.*, chair and committee assignments), and the term of service.

Name of organization	Your role	Term
Name of organization	Your role	Term
Name of organization	Your role	Term

4. *Personal Integrity.* Character is an important consideration in evaluating any prospective Bank director. All directors must have high ethical standards and integrity in both their personal and professional dealings. Please indicate whether you ever have been convicted of a felony, been found to have violated any federal or state civil laws relating to the securities, banking, housing or real estate industries, or have had a professional license suspended or revoked.
Yes ☐ No ☐

If you answered Yes, please explain.

5. *Independence.* It is essential that an independent director be able to act independently of management in overseeing the policy and operations of a Bank, and not have any relationships that may create actual or apparent conflicts of interest. Please disclose whether you have any familial or business relationships with any members of Bank management or the board of directors of the Bank, and any other relationship(s) that might lead a reasonable person to question your independence. Yes ☐ No ☐

If you answered Yes, please explain.

6. *Other Experience and Education.* Please provide a copy of your resume if it describes other business, professional, or educational achievements that are not described in the responses to the questions above. Resume attached. Yes ☐ No ☐

BY EXECUTING AND SUBMITTING THIS APPLICATION FORM, YOU ARE CERTIFYING THAT THE INFORMATION YOU PROVIDED IS TRUE, CORRECT, AND COMPLETE TO THE BEST OF YOUR KNOWLEDGE AND THAT YOU AGREE TO SERVE AS A DIRECTOR IF ELECTED.

_____ _____

Signature Date

Privacy Act Statement: In accordance with the Privacy Act (5 U.S.C. 552a), the following notice is provided. This information is solicited under authority of 12 U.S.C. 1427(a) and (b); and 12 CFR 1261.5, 1261.7, and 1261.10 to 1261.13. Furnishing the information on this form is voluntary, but failure to do so may result in you not meeting the statutory and regulatory eligibility requirements to serve as an independent director. The purpose of this information is to facilitate the timely determination of your eligibility to serve as an independent director. Information may be disclosed in accordance with the routine uses identified in FHFA-System of Records Notice FHFA-8 Federal Home Loan Bank Directors, which may be found at http://www.fhfa.gov/webfiles/21534/Notice%20FHFA%20SORs%20(FHFA-7%20to%20FHFA-13)_published%2076%20FR%2033286%20(6-8-11)%20(2).pdf).

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

FEDERAL HOME LOAN BANK INDEPENDENT DIRECTOR ANNUAL CERTIFICATION FORM

Full name: _____

Federal Home Loan Bank of: _____

Every year, each incumbent independent Federal Home Loan Bank (Bank) director must certify that he or she continues to meet all of the following requirements:

- United States citizen
- Bona fide resident of a state in the geographic district of the Bank on whose board you serve
  - your principal residence is located in that geographic district OR
  - you own or lease a second residence in the district *and* are employed in the district
- During your term of office, you and your spouse may not:
  - serve as an officer of any Federal Home Loan Bank
  - serve as an officer, employee, or director of any member or subsidiary of a member of the Bank you serve, or any holding company that controls one or more members of the Bank you serve if the assets of all such members constitute 35 percent or more of the assets of the holding company, on a consolidated basis
  - serve as an officer, employee, or director of any recipient of advances from the Bank you serve, or any holding company that controls one or more recipients of advances from the Bank you serve if the assets of all such recipients constitute 35 percent or more of the assets of the holding company, on a consolidated basis
- To be designated a public interest director, you must have more than four years experience representing consumer or community interests on banking services, credit needs, housing, or consumer financial protections
- If you are not designated as a public interest director, you must have knowledge or experience in one of the following: auditing and accounting, derivatives, financial management, organizational management, project development, risk management practices, or the law.

By executing this form, you are certifying that you continue to meet these requirements and that the director application form you submitted previously, or any amended certification form you submitted previously, is true, correct, and complete to the best of your knowledge.

Please check one box:

☐ **No changes have occurred.**

☐ **Changes have occurred to my responses in these sections of my Form:**

Personal information:

Eligibility information, including conflicts of interest:

Commitment to serve:

Personal integrity:

Independence:

Other changes:

Dated: _____

Signature: _____

Privacy Act Statement: In accordance with the Privacy Act (5 U.S.C. 552a), the following notice is provided. This information is solicited under authority of 12 U.S.C. 1427(a) and (b); and 12 CFR 1261.5, 1261.7, and 1261.10 to 1261.13. Furnishing the information on this form is voluntary, but failure to do so may result in you not meeting the statutory and regulatory eligibility requirements to serve as an independent director. The purpose of this information is to facilitate the timely determination of your eligibility to serve as an independent director. Information may be disclosed in accordance with the routine uses identified in FHFA-System of Records Notice FHFA-8 Federal Home Loan Bank Directors, which may be found at http://www.fhfa.gov/webfiles/21534/Notice%20FHFA%20SORs%20(FHFA-7%20to%20FHFA-13)_published%2076%20FR%2033286%20(6-8-11)%20(2).pdf).

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Expires 10/31/2014
OMB No. 2590-0006

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BILLING CODE 8070–01–C

FEDERAL HOUSING FINANCE AGENCY

[No. 2014–N–13]

Federal Home Loan Bank Members Selected for Community Support Review 2014–2015 Review Cycle—4th Round

AGENCY: Federal Housing Finance Agency.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Agency (FHFA) is announcing the Federal Home Loan Bank (Bank) members it has selected for the 2014–2015 Review Cycle—4th Round under FHFA's community support requirements regulation. This Notice also prescribes the deadline by which Bank members selected for this review cycle must submit Community Support Statements to FHFA.

DATES: Bank members selected for this review cycle must submit Community Support Statements to FHFA on or before December 15, 2014. Comments on members' community support performance must be submitted to FHFA by the same date.

ADDRESSES: Submit completed Community Support Statements to FHFA by electronic mail at *hmgcommunitysupportprogram@fhfa.gov.* A member that does not have electronic mail capability may submit the Community Support Statement by fax to 202–649–4130. Comments on members' community support performance should be submitted to FHFA as provided above.

FOR FURTHER INFORMATION CONTACT: Melissa Allen, Principal Program Analyst, at *hmgcommunitysupportprogram@fhfa.gov* or 202–658–9266, Office of Housing and Regulatory Policy, Division of Housing Mission and Goals, Federal Housing Finance Agency, Ninth Floor, 400 Seventh Street SW., Washington, DC 20024.

SUPPLEMENTARY INFORMATION:

I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires FHFA to promulgate regulations establishing standards of community investment or service that Bank members must meet in order to maintain access to long-term Bank advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by FHFA must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 *et seq.,* and the Bank member's record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(2). Pursuant to section 10(g) of the Bank Act, FHFA has promulgated a community support requirements regulation that establishes standards a Bank member must meet in order to maintain access to long-term advances, and establishes review criteria FHFA must apply in evaluating a member's community support performance. *See* 12 CFR part 1290. The regulation includes standards and criteria for the two statutory factors—members' CRA performance and members' record of lending to first-time homebuyers. 12 CFR 1290.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 1290.3(b). All members subject to community support review, including those not subject to the CRA, must meet the first-time homebuyer standard. 12 CFR 1290.3(c). Members that have been certified as community development financial institutions (CDFIs) are deemed to be in compliance with the community support requirements and are not subject to periodic community support review, unless the CDFI member is also an insured depository institution or a CDFI credit union. 12 CFR 1290.2(e).

Under the regulation, FHFA selects approximately one-eighth of the members in each Bank district for community support review each calendar quarter. 12 CFR 1290.2(a). FHFA will not review an institution's community support performance until it has been a Bank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member. On or before November 17, 2014, each Bank will notify the members in its district that have been selected for this review cycle that they must complete and submit Community Support Statements to FHFA by the deadline prescribed in this Notice. 12 CFR 1290.2(b)(2)(i). The member's Bank will provide a blank Community Support Statement Form (OMB No. 2590–0005), which also is available on FHFA's Web site: *http://www.fhfa.gov/webfiles/2924/FHFAForm060.pdf.* Upon request, the member's Bank also will provide assistance in completing the Community Support Statement. Each Bank member selected for this review cycle must complete the Community Support Statement and submit it to FHFA by the deadline prescribed in this Notice. 12 CFR 1290.2(b)(1)(ii) and (c).

FHFA has selected the following members for this review cycle:

Docket # (FHFAID)	Member	City	State
Federal Home Loan Bank of Boston—District 1			
55199	Ironshore Specialty Insurance Company	Scottsdale	AZ
7397	UNION SAVINGS BANK	Danbury	CT
55195	Franklin Trust Federal Credit Union	Hartford	CT
8429	JEWETT CITY SB	Jewett City	CT
55109	Meriden Schools	Meriden	CT
5234	Naugatuck Valley Savings and Loan	Naugatuck	CT
8506	NEWTOWN SAVINGS BANK	Newtown	CT
6745	Fairfield County Bank Corp.	Ridgefield	CT
7711	FIRST COUNTY BANK	Stamford	CT
16621	Patriot National Bank	Stamford	CT
16401	Dutch Point Credit Union, Inc.	Wethersfield	CT
16446	Windsor Locks Federal Credit Union	Windsor Locks	CT
16528	ATHOL CREDIT UNION	Athol	MA
55297	Lexington Insurance Company	Boston	MA
55129	Liberty Life Assurance Company of Boston	Boston	MA
55160	City of Boston Credit Union	Boston	MA
16448	Crescent Credit Union	Brockton	MA
7948	Brookline Bank	Brookline	MA
4594	NORTH CAMBRIDGE COOP	Cambridge	MA

Docket # (FHFAID)	Member	City	State
16273	CAMBRIDGE TRUST COMP	Cambridge	MA
5824	Canton Co-operative Bank	Canton	MA
55111	Norfolk and Dedham Mutual Fire Insurance Company	Dedham	MA
16620	MEETINGHOUSE CO–OPER	Dorchester	MA
55194	Premier Source Credit Union	East Longmeadow	MA
13512	The Edgartown National Bank	Edgartown	MA
55316	Santo Christo Federal Credit Union	Fall River	MA
2284	FIDELITY CO–OP BK	Fitchburg	MA
55110	Metrowest Community Credit Union	Framingham	MA
9582	GREENFIELD CO–OP	Greenfield	MA
4530	Haverhill Bank	Haverhill	MA
16297	Leominster Credit Union	Leominster	MA
4930	LOWELL CO–OPERATIVE	Lowell	MA
16539	MARLBOROUGH SAVINGS	Marlborough	MA
4167	Milford FS & LA	Milford	MA
55271	New Bedford Credit Union	New Bedford	MA
16919	Institution Savings in Newburyport and its Vicinity	Newburyport	MA
55010	Grafton Suburban	North Grafton	MA
15966	Rockland Federal Credit Union	Rockland	MA
8441	COOPERATIVE BANK	Roslindale	MA
8342	SALEM FIVE CENTS SB	Salem	MA
55114	Somerset Credit Union	Somerset	MA
16568	Taupa Lithuanian Federal Credit Union	South Boston	MA
16159	Southbridge Credit Union	Southbridge	MA
55120	Pioneer Valley Credit Union	Springfield	MA
55196	STCU Credit Union	Springfield	MA
5068	COUNTRY BFS	Ware	MA
12405	WELLESLEY CO–OP	Wellesley	MA
1456	CAPE COD COOP BK	Yarmouth	MA
7705	Northeast Bank	Auburn	ME
7107	BANGOR SAVINGS BANK	Bangor	ME
15914	Bangor Federal Credit Union	Bangor	ME
6049	Bar Harbor S & LA	Bar Harbor	ME
55073	Cport Credit Union	Portland	ME
16338	York County FCU	Sanford	ME
55295	Tricorp Federal Credit Union	Westbrook	ME
55309	American European Insurance Company	Concord	NH
16567	CENTRIX BANK & TRUST	Bedford	NH
9534	Northway Bank	Berlin	NH
1007	PROFILE BANK, FSB	Rochester	NH
16445	Holy Rosary Regional Credit Union	Rochester	NH
7941	BANK OF NEWPORT	Newport	RI
16402	Greenwood Credit Union	Warwick	RI
2460	The Brattleboro Savings and Loan Association	Brattleboro	VT
	Federal Home Loan Bank of New York—District 2		
1504	Cape Bank	Cape May Court House	NJ
3034	United Roosevelt Savings Bank	Carteret	NJ
12989	Unity Bank	Clinton	NJ
10064	1st Constitution Bank	Cranbury	NJ
1993	Delanco Federal Savings Bank	Delanco	NJ
16493	Pinnacle Federal Credit Union	Edison	NJ
2454	Columbia Bank	Fair Lawn	NJ
4610	Haven Savings Bank	Hoboken	NJ
55144	The Atlantic Federal Credit Union	Kenilworth	NJ
55296	Colonial American Bank	Middletown	NJ
55032	Garden State Federal Credit Union	Moorestown	NJ
55038	Proponent Federal Credit Union	Nutley	NJ
55149	College Savings Bank	Princeton	NJ
5236	1st Bank of Sea Isle City	Sea Isle City	NJ
14919	Union Center National Bank	Union	NJ
5398	Manasquan Savings Bank	Wall Township	NJ
8063	Wawel Bank	Wallington	NJ
2422	Crest Savings Bank	Wildwood Crest	NJ
55033	First New York Federal Credit Union	Albany	NY
55250	GHS Federal Credit Union	Binghamton	NY
9545	The Bridgehampton National Bank	Bridgehampton	NY
10899	The Bank of Castile	Castile	NY
55049	Dannemora Federal Credit Union	Dannemora	NY
16625	Visions Federal Credit Union	Endicott	NY
55277	First Choice Financial Federal Credit Union	Gloversville	NY
55103	The First National Bank of Groton	Groton	NY

Docket # (FHFAID)	Member	City	State
55227	Island Federal Credit Union	Hauppauge	NY
10785	Jeff Bank	Jeffersonville	NY
16125	The National Union Bank of Kinderhook	Kinderhook	NY
16321	Mid-Hudson Valley Federal Credit Union	Kingston	NY
5529	Medina Savings & Loan Association	Medina	NY
55123	G.P.O. Federal Credit Union	New Hartford	NY
2995	NorthEast Community Bank	New York	NY
15515	Israel Discount Bank of New York	New York	NY
16793	Emigrant Bank	New York	NY
55108	The United States Life Insurance Company in the Ci	New York	NY
55180	Genworth Life Insurance Company of New York	New York	NY
10286	NBT Bank, National Association	Norwich	NY
55249	Saint Lawrence Federal Credit Union	Ogdensburg	NY
15028	The Oneida Savings Bank	Oneida	NY
15878	The Suffolk County National Bank of Riverhead	Riverhead	NY
55236	Genesee Co-op Federal Credit Union	Rochester	NY
15653	Sawyer Savings Bank	Saugerties	NY
1473	Adirondack Bank	Utica	NY
1472	Hometown Bank of the Hudson Valley	Walden	NY
16339	First Central Savings Bank	Whitestone	NY
55116	SUMA (Yonkers) Federal Credit Union	Yonkers	NY
55138	Scotiabank de Puerto Rico	Hato Rey	PR
55014	Citibank, N.A.	Sioux Falls	SD
	Federal Home Loan Bank of Pittsburgh—District 3		
55320	Applied Bank	Newark	DE
55231	Metropolitan Tower Life Insurance Company	Newark	DE
4410	Santander Bank, National Association	Wilmington	DE
11042	PNC Bank, NA	Wilmington	DE
55232	MetLife Investors USA Insurance Company	Wilmington	DE
15619	First National Bank of Wyoming	Wyoming	DE
15591	American Bank	Allentown	PA
2601	Iron Worker's Savings Bank	Aston	PA
9583	National Penn Bank	Boyertown	PA
4441	Union Building and Loan Savings Bank	Bridgewater	PA
55029	Atlantic Community Bankers Bank	Camp Hill	PA
12162	Clearfield Bank & Trust	Clearfield	PA
55290	Corry Federal Credit Union	Corry	PA
13498	Centric Bank	Harrisburg	PA
55165	National Union Fire Company of Pittsburgh, PA	Harrisburg	PA
239	Indiana First Savings Bank	Indiana	PA
16536	Jim Thorpe Neighborhood Bank	Jim Thorpe	PA
55136	Everence Federal Credit Union	Lancaster	PA
13213	Manor Bank	Manor	PA
16137	Union Community Bank	Marietta	PA
55253	Atlantic States Insurance Company	Marietta	PA
55260	Americhoice Federal Credit Union	Mechanicsburg	PA
55112	Clearview Credit Union	Moon Township	PA
230	Standard Bank, PASB	Murrysville	PA
16129	Sb1 Federal Credit Union	Philadelphia	PA
16450	American Heritage Federal C.U.	Philadelphia	PA
16361	Customers Bank	Phoenixville	PA
587	Brentwood Bank	Pittsburgh	PA
16607	Allegheny Valley Bank of Pittsburgh	Pittsburgh	PA
55210	Tri County Area Federal Credit Union	Pottstown	PA
55268	Guthrie Federal Credit Union	Sayre	PA
9306	Somerset Trust Company	Somerset	PA
9352	Univest Bank & Trust Company	Souderton	PA
3439	Compass Savings Bank	Wilmerding	PA
55288	Pioneer West Virginia Credit Union	Charleston	WV
2808	Hancock County Savings Bank, FSB	Chester	WV
9520	Citizens National Bank of West Virginia	Elkins	WV
15765	MVB Bank, Inc.	Fairmont	WV
15828	The Fayette County NB of Fayetteville	Fayetteville	WV
15580	The Bank of Romney	Romney	WV
10351	PROGRESSIVE BANK, N.A.	Wheeling	WV
	Federal Home Loan Bank of Atlanta—District 4		
16250	America's First Federal Credit Union	Birmingham	AL
55113	Cadence Bank, N.A.	Birmingham	AL
54977	AloStar Bank of Commerce	Birmingham	AL

Docket # (FHFAID)	Member	City	State
16462	First Bank of Boaz	Boaz	AL
16597	Town-Country National Bank	Camden	AL
16470	Coosa Pines Federal Credit Union	Childersburg	AL
15503	EvaBank	Eva	AL
16371	Escambia County Bank	Flomaton	AL
7048	First Federal Bank	Fort Payne	AL
16141	Traders & Farmers Bank	Haleyville	AL
14988	City Bank of Hartford	Hartford	AL
8569	Worthington Federal Bank	Huntsville	AL
3645	Pinnacle Bank	Jasper	AL
16459	Marion Bank and Trust Company	Marion	AL
55279	Guardian Federal Credit Union	Montgomery	AL
16022	Bank of Pine Hill	Pine Hill	AL
13450	Community Spirit Bank	Red Bay	AL
6432	First Federal Bank, A FSB	Tuscaloosa	AL
16469	Alabama Credit Union	Tuscaloosa	AL
13531	The American NB of Union Springs	Union Springs	AL
16403	Small Town Bank	Wedowee	AL
16282	Bank of York	York	AL
16532	Library of Congress Federal Credit Union	Washington	DC
55204	Transportation Federal Credit Union	Washington	DC
16373	Platinum Bank	Brandon	FL
55062	Focus Credit Union	Chattahoochee	FL
16128	Citizens Bank and Trust	Frostproof	FL
16162	Columbia Bank	Lake City	FL
10618	Pacific National Bank	Miami	FL
13121	City National Bank of Florida	Miami	FL
14891	INTERCREDIT BANK, N.A.	Miami	FL
55142	Sabadell United Bank, National Association	Miami	FL
14956	Farmers and Merchants Bank	Monticello	FL
16000	The First National Bank of Mount Dora	Mount Dora	FL
16554	Fairwinds Credit Union	Orlando	FL
55140	Orlando	Orlando	FL
16312	Community Credit Union of Florida	Rockledge	FL
55139	San Antonio Citizens Credit Union	San Antonio	FL
16894	Cornerstone Community Bank	St. Petersburg	FL
54987	United Property and Casualty Insurance Company	St. Petersburg	FL
55050	Envision Credit Union	Tallahassee	FL
15965	Grand Bank & Trust of Florida	West Palm Beach	FL
16209	AB&T National Bank	Albany	GA
16288	SunTrust Bank, Atlanta	Atlanta	GA
55261	MAG Mutual Insurance Company	Atlanta	GA
55156	Georgia's Own Credit Union	Atlanta	GA
12916	First Port City Bank	Bainbridge	GA
13209	Peoples State Bank and Trust	Baxley	GA
14771	Bank of Early	Blakely	GA
16903	The Citizens Bank of Forsyth County	Cumming	GA
16387	First Bank of Dalton	Dalton	GA
16918	Alliance National Bank	Dalton	GA
16316	The Bank of Edison	Edison	GA
14936	Colony Bank	Fitzgerald	GA
15999	Community Banking CO of Fitzgerald	Fitzgerald	GA
16499	Farmers State Bank	Lumpkin	GA
16489	The Security State Bank	McRae	GA
17511	First Bank of Coastal Georgia	Pembroke	GA
16315	First Peoples Bank	Pine Mountain	GA
13289	Citizens Bank of Washington County	Sandersville	GA
16553	Bank of Hancock County	Sparta	GA
3293	Thomas County FS & LA	Thomasville	GA
3576	Stephens Federal Bank	Toccoa	GA
16629	Bank of Dade	Trenton	GA
16369	Altamaha Bank & Trust Company	Uvalda	GA
13248	Commercial Banking Company	Valdosta	GA
4067	Vidalia Federal Savings Bank	Vidalia	GA
12960	Peoples Bank (The)	Willacoochee	GA
9191	Talbot State Bank	Woodland	GA
16596	Harford Bank	Aberdeen	MD
2148	Chesapeake Bank of Maryland	Baltimore	MD
2349	Arundel Federal Savings Bank	Baltimore	MD
8156	Madison Square Federal Savings Bank	Baltimore	MD
8193	Fairmount Bank	Baltimore	MD
8196	Hopkins Federal Savings Bank	Baltimore	MD
16164	Municipal Employees C.U. of Baltimore	Baltimore	MD

Docket # (FHFAID)	Member	City	State
16419	Marriott Employees' Federal C.U.	Bethesda	MD
16374	U.S. Postal Service Federal C.U.	Clinton	MD
12870	Bank of Delmarva	Delmar	MD
6037	The Patapsco Bank	Dundalk	MD
489	OBA Bank	Germantown	MD
55161	Bull Dog Federal Credit Union	Hagerstown	MD
3758	Rosedale FS & LA	Nottingham	MD
7173	Colombo Bank	Rockville	MD
6091	Community Bank of Chesapeake	Waldorf	MD
12844	Woodsboro Bank	Woodsboro	MD
3846	Asheville Savings Bank	Asheville	NC
15964	VantageSouth Bank	Cary	NC
16140	Charlotte Metro Federal Credit Union	Charlotte	NC
55003	Carolina Telco Federal Credit Union	Charlotte	NC
6343	First Federal Bank	Dunn	NC
16546	North Carolina Community Federal Credit Union	Goldsboro	NC
5153	First FSB of Lincolnton	Lincolnton	NC
55081	Southern Bank and Trust Company	Mount Olive	NC
15993	Lumbee Guaranty Bank	Pembroke	NC
16198	Local Government Federal Credit Union	Raleigh	NC
1350	Roanoke Rapids Savings Bank, SSB	Roanoke Rapids	NC
1655	Roxboro Savings Bank, SSB	Roxboro	NC
6352	Newsouth Bank	Washington	NC
16238	Truliant Federal Credit Union	Winston Salem	NC
5642	Abbeville First Bank	Abbeville	SC
16177	The Conway National Bank	Conway	SC
2502	First Piedmont FS & LA of Gaffney	Gaffney	SC
16199	S.C. Telco Federal Credit Union	Greenville	SC
4516	Mutual Savings Bank	Hartsville	SC
16893	The Commercial Bank	Honea Path	SC
16163	Founders Federal Credit Union	Lancaster	SC
16497	First Community Bank	Lexington	SC
55252	Mid Carolina Credit Union	Lugoff	SC
3697	Pee Dee Federal Savings Bank	Marion	SC
55150	SRP Federal Credit Union	North Augusta	SC
16101	South Carolina Federal Credit Union	North Charleston	SC
16313	Family Trust Federal Credit Union	Rock Hill	SC
4769	Oconee Federal Savings and Loan	Seneca	SC
55086	SAFE Federal Credit Union	Sumter	SC
14971	Community First Bank	Walhalla	SC
16498	Bank of Walterboro	Walterboro	SC
55004	Narfe Premier Federal Credit Union	Alexandria	VA
13361	Citizens Bank and Trust Company	Blackstone	VA
16885	Monarch Bank	Chesapeake	VA
55051	Community Capital Bank of Virginia	Christiansburg	VA
16251	Cardinal Bank	Fairfax	VA
55214	Park View Federal Credit Union	Harrisonburg	VA
55009	Northern Neck Insurance Company	Irvington	VA
55200	CornerStone Bank, N. A.	Lexington	VA
16200	Virginia Community Bank	Louisa	VA
3881	Martinsville First Savings Bank	Martinsville	VA
55262	Langley Federal Credit Union	Newport News	VA
16178	TowneBank	Portsmouth	VA
16165	Partners Financial Federal Credit Union	Richmond	VA
55240	Dominion Credit Union	Richmond	VA
55221	Chartway Federal Credit Union	Virginia Beach	VA
	Federal Home Loan Bank of Cincinnati—District 5		
55283	State Auto Property & Casualty Insurance Company	West Des Moines	IA
4246	Home FS & LA	Ashland	KY
458	Kentucky FS & LA	Covington	KY
55041	Inez Deposit Bank	Inez	KY
13596	CASEY COUNTY BANK	Liberty	KY
15963	Metro Bank	Louisville	KY
55155	Anthem Health Plans of Kentucky, Inc.	Louisville	KY
7384	Home Savings Bank, FSB	Ludlow	KY
16391	FIRST GUARANTY BANK	Martin	KY
13508	BANK OF MAYSVILLE	Maysville	KY
13528	HART COUNTY BANK AND TRUST	Munfordville	KY
13393	THE FARMERS BANK	Nicholasville	KY
13530	Independence Bank of Kentucky	Owensboro	KY
15979	FIRST SECURITY BK OF OWENSB	Owensboro	KY

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16019	OWINGSVILLE BANKING CO	Owingsville	KY
55237	C-Plant Federal Credit Union	Paducah	KY
9685	Community Trust Bank, Inc.	Pikeville	KY
16306	MADISON BANK	Richmond	KY
55287	The Farmers National Bank of Scottsville	Scottsville	KY
13586	CUMBERLAND SECURITY BANK IN	Somerset	KY
16352	Citizens National Bank of Somerset	Somerset	KY
55238	Pinnacle Bank, Inc.	Vanceburg	KY
10744	COMMERCIAL BANK	West Liberty	KY
13523	ANTWERP EXCHANGE BK	Antwerp	OH
13102	HOCKING VALLEY BANK	Athens	OH
16204	ROCKHOLD BROWN & CO BANK	Bainbridge	OH
824	Citizens FS & LA	Bellefontaine	OH
16624	CITIZENS BANK COMPANY	Beverly	OH
4715	Mercer Savings Bank	Celina	OH
597	Cheviot Savings Bank	Cincinnati	OH
1409	Cincinnati FS & LA	Cincinnati	OH
13467	THE NORTH SIDE BANK & TRUST	Cincinnati	OH
55011	Lafayette Life Insurance Company	Cincinnati	OH
55006	First Choice Credit Union	Coldwater	OH
55131	Bridge Credit Union, Inc.	Columbus	OH
55170	Nationwide Life Insurance Company	Columbus	OH
55185	JPMorgan Chase Bank, National Association	Columbus	OH
3901	Home Loan Savings Bank (The)	Coshocton	OH
827	The Covington S & LA	Covington	OH
16911	The Citizens Bank of De Graff	De Graff	OH
16134	Midwest Community Federal Credit Union	Defiance	OH
55005	American Mutual Share Insurance Corporation	Dublin	OH
55171	Eaton Family	Euclid	OH
55212	Hancock Federal Credit Union	Findlay	OH
16130	First National Bank of Germantown	Germantown	OH
16020	Chaco Credit Union, Incorporated	Hamilton	OH
13352	THE HICKSVILLE BANK	Hicksville	OH
13580	The Delaware County B&T Company	Lewis Center	OH
55174	Topmark Federal Credit Union	Lima	OH
16351	THE BANK OF MAGNOLIA CO	Magnolia	OH
13476	THE CITIZENS SAVINGS BANK	Martins Ferry	OH
5752	Peoples First Savings Bank	Mason	OH
13066	Commercial & Savings Bank (The)	Millersburg	OH
13552	Peoples National Bank	New Lexington	OH
55178	Diebold Federal Credit Union	North Canton	OH
10937	The First National Bank of Pandora	Pandora	OH
55132	Buckeye State Mutual Insurance Company	Piqua	OH
10728	FARMERS BANK & SAVINGS CO	Pomeroy	OH
16244	THE ST HENRY BANK	Saint Henry	OH
55001	Your Legacy Federal Credit Union	Tiffin	OH
16350	THE ARLINGTON BANK	Upper Arlington	OH
13326	THE COMMERCIAL SAVINGS BANK	Upper Sandusky	OH
16598	First Citizens N.B. of Upper Sandusky	Upper Sandusky	OH
2186	Versailles Savings and Loan Company	Versailles	OH
16877	First National Bank of Waverly	Waverly	OH
16042	Kemba Credit Union, Inc.	West Chester	OH
55276	Lightning Rod Mutual Insurance Company	Wooster	OH
16492	SPRING VALLEY BANK	Wyoming	OH
919	Home Savings and Loan Company	Youngstown	OH
2887	Athens Federal Community Bank	Athens	TN
8951	PEOPLE'S B&T CO OF PICKETT	Byrdstown	TN
16142	BANK OF CAMDEN	Camden	TN
16144	LEGENDS BANK	Clarksville	TN
16515	Fort Campbell Federal Credit Union	Clarksville	TN
55197	Appalachian Community Federal Credit Union	Gray	TN
13468	GREENFIELD BANKING COMPANY	Greenfield	TN
13162	FIRST PEOPLES BANK OF TENNE	Jefferson City	TN
55166	Macon Bank and Trust Company	Lafayette	TN
3067	Lawrenceburg Federal Bank	Lawrenceburg	TN
6646	Community Bank	Lexington	TN
14563	UNION BK & TR COMPANY	Livingston	TN
3050	BankTennessee	Memphis	TN
16451	Memphis City Employees Credit Union	Memphis	TN
55242	Southern Security Federal Credit Union	Memphis	TN
16581	FARMERS STATE BANK	Mountain City	TN
16160	Tennessee Credit Union	Nashville	TN
16878	Citizens Savings Bank & Trust Company	Nashville	TN

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16912	The FNB of Oneida	Oneida	TN
13067	CITIZENS BANK & TRUST CO	Rutledge	TN
13517	THE BANK OF WAYNESBORO	Waynesboro	TN
	Federal Home Loan Bank of Indianapolis—District 6		
54996	Washington National Insurance Company	Carmel	IN
15896	Hoosier Heartland State Bank	Crawfordsville	IN
13385	Elberfeld State Bank (The)	Elberfeld	IN
55122	Evansville Commerce Bank	Evansville	IN
55157	Centurion Credit Union	Evansville	IN
16276	Forum Credit Union	Fishers	IN
207	MUTUAL SAVINGS BANK	Franklin	IN
55035	Forethought Life Insurance Company	Indianapolis	IN
13452	FARMERS STATE BANK	Lagrange	IN
2400	WEST END SAVINGS BANK	Richmond	IN
13534	Scott County State Bank (The)	Scottsburg	IN
16150	Communitywide Federal Credit Union	South Bend	IN
16408	Indiana State University Federal C.U.	Terre Haute	IN
16573	Encompass Credit Union	Tipton	IN
16413	Purdue Employees Federal Credit Union	West Lafayette	IN
16319	TLC Community Credit Union	Adrian	MI
16368	Sunrise Family Credit Union	Bay City	MI
16107	First Independence Bank	Detroit	MI
16214	COMMUNICATING ARTS CREDIT UNION	Detroit	MI
55208	Tuebor Captive Insurance Company LLC	Detroit	MI
55229	Sagelink Credit Union	Durand	MI
15831	Michigan State University Federal CU	East Lansing	MI
16887	Northern Michigan Bank	Escanaba	MI
16245	Mercantile Bank of Michigan	Grand Rapids	MI
16318	Lake Michigan Credit Union	Grand Rapids	MI
16407	Northpointe Bank	Grand Rapids	MI
55031	Hastings Mutual Insurance Company	Hastings	MI
15935	THE BANK OF HOLLAND	Holland	MI
15036	HONOR STATE BANK, HONOR	Honor	MI
11932	First National Bank & Trust Company of Iron Mountain (The)	Iron Mountain	MI
55230	American 1 Credit Union	Jackson	MI
55303	John Hancock Life Insurance Company (USA)	Lansing	MI
55045	Lapeer County Bank & Trust Co.	Lapeer	MI
55289	Good Shepherd Credit Union	Lincoln Park	MI
15618	MAYVILLE STATE BANK	Mayville	MI
2620	WOLVERINE FS&LA	Midland	MI
16326	Dow Chemical Employees Credit Union	Midland	MI
16367	Northland Area Federal Credit Union	Oscoda	MI
16104	PORT AUSTIN STATE BANK, PORT AUSTIN, MI	Port Austin	MI
55102	Portland Credit Union	Portland	MI
1910	STURGIS BANK & TRUST COMPANY, FSB	Sturgis	MI
15998	The Lafayette Life Insurance Company	Cincinnati	OH
	Federal Home Loan Bank of Chicago—District 7		
13149	Citizens National Bank of Albion	Albion	IL
16356	Anna-Jonesboro National Bank	Anna	IL
15820	Arcola First Bank	Arcola	IL
15737	The First National Bank of Arenzville	Arenzville	IL
15152	Ben Franklin Bank of Illinois	Arlington Heights	IL
16216	West Central Bank	Ashland	IL
14570	The Atlanta National Bank	Atlanta	IL
15639	Scott State Bank	Bethany	IL
15616	First State Bank Of Bloomington	Bloomington	IL
55246	Country Life Insurance Company	Bloomington	IL
55173	Fieldstone Credit Union	Bradley	IL
4475	Midland Federal Savings and Loan Association	Bridgeview	IL
16302	First National Bank of Brookfield	Brookfield	IL
13394	Farmers & Merchants State Bank of Bushnell	Bushnell	IL
13272	Byron Bank	Byron	IL
13443	First State Bank of Campbell Hill	Campbell Hill	IL
13483	Carrollton Bank	Carrollton	IL
15511	Bank Of Chestnut	Chestnut	IL
837	Royal Savings Bank	Chicago	IL
2281	Hoyne Savings Bank	Chicago	IL
2335	Loomis Federal Savings and Loan Association	Chicago	IL
3468	North Side Federal Savings & Loan Association of Chicago	Chicago	IL

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11311	Seaway Bank and Trust Company	Chicago	IL
15967	American Metro Bank	Chicago	IL
16548	Chicago Patrolmen's Federal Credit Union	Chicago	IL
16602	MB Financial Bank, National Association	Chicago	IL
55017	The PrivateBank and Trust Company	Chicago	IL
55168	Fidelity Life Association	Chicago	IL
55068	American Eagle Bank of Chicago	Chicago	IL
55177	Beverly Bank & Trust Company, National Association	Chicago	IL
55217	AIG Specialty Insurance Company	Chicago	IL
1567	Central Federal Savings & Loan Association	Cicero	IL
14903	Central State Bank	Clayton	IL
3613	DeWitt Savings Bank	Clinton	IL
16291	First Collinsville Bank	Collinsville	IL
16866	Crystal Lake Bank & Trust Company, National Association	Crystal Lake	IL
13188	Soy Capital Bank and Trust Company	Decatur	IL
55094	Millennium Bank	Des Plaines	IL
13220	Pioneer State Bank	Earlville	IL
55042	Scott Credit Union	Edwardsville	IL
15970	Community First Bank	Fairview Heights	IL
16227	Bank of Farmington	Farmington	IL
16960	First State Bank of Forrest	Forrest	IL
14909	Community State Bank	Galva	IL
16258	The Gifford State Bank	Gifford	IL
55057	SouthernTrust Bank	Goreville	IL
2649	Harvard Savings Bank	Harvard	IL
13591	Premier Bank of Jacksonville	Jacksonville	IL
16614	Joy State Bank	Joy	IL
16551	First Trust Bank of Illinois	Kankakee	IL
13506	First National Bank of La Grange	La Grange	IL
13579	Exchange State Bank	Lanark	IL
14246	The Lemont National Bank	Lemont	IL
16615	State Bank of Lincoln	Lincoln	IL
55055	Rockford Bell Credit Union	Loves Park	IL
16552	Prairie Community Bank	Marengo	IL
14344	The First National Bank	Mattoon	IL
358	A J Smith Federal Savings Bank	Midlothian	IL
9523	Southeast National Bank	Moline	IL
2632	Security Savings Bank	Monmouth	IL
16152	Farmers State Bank & Trust Company	Mount Sterling	IL
55082	The First Bank and Trust Company of Murphysboro	Murphysboro	IL
16292	First County Bank	New Baden	IL
13398	Warren-Boynton State Bank	New Berlin	IL
55207	Old Plank Trail Community Bank, National Association	New Lenox	IL
15973	The Peoples State Bank of Newton, Illinois	Newton	IL
55023	ISU Credit Union	Normal	IL
55002	Great Lakes Credit Union	North Chicago	IL
16033	The Old Exchange National Bank of Okawville	Okawville	IL
16136	First Personal Bank	Orland Park	IL
685	Ottawa Savings Bank	Ottawa	IL
55301	Cornerstone National Bank & Trust Company	Palatine	IL
10767	Peoples Bank & Trust	Pana	IL
16970	Farmers-Merchants National Bank of Paxton	Paxton	IL
15971	Better Banks	Peoria	IL
55100	First Community Financial Bank	Plainfield	IL
14856	Town and Country Bank Midwest	Quincy	IL
13054	Community State Bank of Rock Falls	Rock Falls	IL
55098	Modern Woodmen of America	Rock Island	IL
55286	Royal Neighbors of America	Rock Island	IL
13094	Alpine Bank & Trust Company	Rockford	IL
13271	Rushville State Bank	Rushville	IL
55259	STC Capital Bank	Saint Charles	IL
16257	American Chartered Bank	Schaumburg	IL
55251	Motorola Employees Credit Union	Schaumburg	IL
55048	Catholic & Community Credit Union	Shiloh	IL
16247	State Bank of Speer	Speer	IL
13397	Illini Bank	Springfield	IL
55306	Horace Mann Life Insurance Company	Springfield	IL
13058	Tuscola National Bank	Tuscola	IL
16040	Baxter Credit Union	Vernon Hills	IL
16522	Petefish, Skiles & Company	Virginia	IL
55179	Consumers Cooperative Credit Union	Waukegan	IL
13564	Community Bank	Winslow	IL
16869	State Bank	Wonder Lake	IL

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11965	Portage County Bank	Almond	WI
55267	Thrivent Federal Credit Union	Appleton	WI
13293	Pioneer Bank	Auburndale	WI
10712	The First Bank of Baldwin	Baldwin	WI
12080	Black River Country Bank	Black River Falls	WI
13510	Bonduel State Bank	Bonduel	WI
17079	Bank Mutual	Brown Deer	WI
16599	Bank of Cashton	Cashton	WI
14748	Farmers and Merchants Union Bank	Columbus	WI
3234	Cumberland Federal Bank, FSB	Cumberland	WI
14853	Cornerstone Community Bank	Grafton	WI
16289	Bay Bank	Green Bay	WI
16612	Town Bank	Hartland	WI
55145	Hayward Community Credit Union	Hayward	WI
15031	Highland State Bank	Highland	WI
13185	Park Bank	Holmen	WI
12930	Security State Bank	Iron River	WI
5151	East Wisconsin Savings Bank, S.A.	Kaukauna	WI
13014	The Greenwood's State Bank	Lake Mills	WI
16547	Wisconsin Bank and Trust	Madison	WI
55047	University of Wisconsin Credit Union	Madison	WI
55291	Heartland Credit Union	Madison	WI
55234	Rural Mutual Insurance Company	Madison	WI
55071	UnitedOne Credit Union	Manitowoc	WI
54975	Marshfield Medical Center Credit Union	Marshfield	WI
13299	Bank of Milton	Milton	WI
55061	Aurora Credit Union	Milwaukee	WI
16860	The First National Bank—Fox Valley	Neenah	WI
55092	Landmark Credit Union	New Berlin	WI
55183	The Peshtigo National Bank	Peshtigo	WI
10108	Clare Bank, National Association	Platteville	WI
13222	Mound City Bank	Platteville	WI
16915	The First National Bank of River Falls	River Falls	WI
15900	Intercity State Bank	Schofield	WI
13375	Community Bank & Trust	Sheboygan	WI
15599	Bank of Sun Prairie	Sun Prairie	WI
16861	Walworth State Bank	Walworth	WI
5313	First Federal Bank of Wisconsin	Waukesha	WI
55107	Liberty Mutual Fire Insurance Company	Wausau	WI
55216	Employers Insurance Company of Wausau	Wausau	WI
55219	West Bend Mutual Insurance Company	West Bend	WI
3894	KeySavings Bank	Wisconsin Rapids	WI
13592	WoodTrust Bank	Wisconsin Rapids	WI
15776	River Cities Bank	Wisconsin Rapids	WI
	Federal Home Loan Bank of Des Moines—District 8		
16508	Landmands Bank	Audubon	IA
55008	R.I.A. Federal Credit Union	Bettendorf	IA
55270	Casebine Community Credit Union	Burlington	IA
12441	Iowa Savings Bank	Carroll	IA
16617	Commercial Savings Bank	Carroll	IA
55097	Metco Credit Union	Cedar Rapids	IA
55181	Midwest Family Mutual Insurance Company	Chariton	IA
16284	PCSB Bank	Clarinda	IA
14968	Linn County State Bank	Coggon	IA
13236	Farmers Savings Bank	Colesburg	IA
16147	Okey-Vernon First National Bank	Corning	IA
55020	Capitol View Credit Union	Des Moines	IA
55034	Des Moines Metro Credit Union	Des Moines	IA
55072	Affinity Credit Union	Des Moines	IA
16481	Alliant Credit Union	Dubuque	IA
55198	IntegrUS Credit Union	Dubuque	IA
13109	First National Bank in Fairfield	Fairfield	IA
16327	Farmers Savings Bank	Fostoria	IA
16272	Grinnell Mutual Reinsurance Company	Grinnell	IA
55133	Logan State Bank	Logan	IA
16477	Maxwell State Bank	Maxwell	IA
16574	Bridge Community Bank	Mount Vernon	IA
16029	State Bank & Trust Co.	Nevada	IA
16120	First Newton National Bank	Newton	IA
55104	Advantage Credit Union	Newton	IA
13210	American State Bank	Osceola	IA

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16105	Panora State Bank	Panora	IA
16045	Marion County State Bank	Pella	IA
16261	Savings Bank	Primghar	IA
13237	Readlyn Savings Bank	Readlyn	IA
14334	Premier Bank	Rock Valley	IA
16390	Home State Bank	Royal	IA
13553	Iowa State Bank	Sac City	IA
15027	Sanborn Savings Bank	Sanborn	IA
12931	State Bank (The)	Spirit Lake	IA
13211	State Bank of Toledo (The)	Toledo	IA
12142	Iowa State Bank	Wapello	IA
16601	Security State Bank	Waverly	IA
13381	First State Bank	Webster City	IA
16271	Freedom Financial Bank	West Des Moines	IA
55054	First Class Credit Union	West Des Moines	IA
13345	Union State Bank	Winterset	IA
16363	Farmers & Merchants State Bank	Winterset	IA
16269	Altura State Bank	Altura	MN
12972	American National Bank of Minnesota	Baxter	MN
13379	First State Bank and Trust	Bayport	MN
16901	First National Bank Bemidji	Bemidji	MN
55059	US Federal Credit Union	Burnsville	MN
16270	F&M Bank Minnesota	Clarkfield	MN
55317	The First National Bank of Cokato	Cokato	MN
12953	The First National Bank of Coleraine	Coleraine	MN
14682	Woodland Bank	Deer River	MN
13568	Northwestern Bank, NA	Dilworth	MN
12883	Western National Bank	Duluth	MN
55079	Minnesota Power Employees Credit Union	Duluth	MN
55201	Northern Communities Credit Union	Duluth	MN
55315	Blue Cross and Blue Shield of Minnesota	Eagan	MN
14336	Fidelity Bank	Edina	MN
55060	Minnesota Bank & Trust	Edina	MN
15645	State Bank of Fairmont	Fairmont	MN
55075	Floodwood Area Credit Union	Floodwood	MN
16206	Franklin State Bank	Franklin	MN
14499	Commerce Bank	Geneva	MN
15008	The First National Bank of Gilbert	Gilbert	MN
16146	Eagle Bank	Glenwood	MN
12917	First Southeast Bank	Harmony	MN
16890	Farmers State Bank of Hartland	Hartland	MN
54991	Peoples Community Credit Union	Hopkins	MN
55205	Vantage Bank	Kent	MN
14362	First Community Bank	Lester Prairie	MN
55137	SMW Federal Credit Union	Lino Lakes	MN
16865	Center National Bank	Litchfield	MN
55163	American Heritage National Bank	Long Prairie	MN
16119	Exchange State Bank	Luverne	MN
16295	Northern Star Bank	Mankato	MN
55241	Allianz Life Insurance Company of North America	Minneapolis	MN
55022	Ironshore Indemnity Inc.	Minneapolis	MN
14276	CornerStone State Bank	Montgomery	MN
55184	Lake State Credit Union	Moose Lake	MN
14808	Citizens State Bank Norwood Young America	Norwood Young America	MN
15007	Odin State Bank	Odin	MN
13074	First State Bank Southwest	Pipestone	MN
13308	PrinsBank	Prinsburg	MN
55307	South Metro Federal Credit Union	Prior Lake	MN
13250	Randall State Bank	Randall	MN
2818	Home Federal Savings Bank	Rochester	MN
16345	North Star Bank	Roseville	MN
16188	Unity Bank	Rush City	MN
55153	St. Cloud Federal Credit Union	Saint Cloud	MN
55188	Great River Federal Credit Union	Saint Cloud	MN
54981	Associated Health Care Credit Union	Saint Paul	MN
55284	North Shore Federal Credit Union	Silver Bay	MN
55158	First State Bank of Swanville	Swanville	MN
16168	Integrity Bank Plus	Wabasso	MN
16518	Citizens State Bank of Waverly, Inc.	Waverly	MN
2984	Wells Federal Bank	Wells	MN
16344	Ideal Credit Union	Woodbury	MN
3435	Worthington Federal Savings Bank, FSB	Worthington	MN
55305	Alton Bank	Alton	MO

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55298	First Independent Bank	Aurora	MO
2639	First Missouri Bank	Brookfield	MO
16476	Community First Bank	Butler	MO
13004	Carroll County Trust Co.	Carrollton	MO
2897	Investors Community Bank	Chillicothe	MO
12906	Chillicothe State Bank	Chillicothe	MO
16348	Concordia Bank of Concordia	Concordia	MO
1283	Ozarks Federal Savings and Loan Association	Farmington	MO
13125	First State Community Bank	Farmington	MO
16588	Callaway Bank (The)	Fulton	MO
12437	Bank Northwest	Hamilton	MO
16978	HNB National Bank	Hannibal	MO
16379	Eagle Bank & Trust Company of Missouri	Hillsboro	MO
16362	Bank of Iberia	Iberia	MO
55095	Central Communications Credit Union	Independence	MO
55353	United Consumers Credit Union	Independence	MO
55130	Missouri Electric Cooperatives E	Jefferson City	MO
55021	NBH Bank, N.A.	Kansas City	MO
55162	Northeast Missouri State Bank	Kirksville	MO
15050	Lamar Bank and Trust Company	Lamar	MO
13108	Summit Bank of Kansas City	Lee's Summit	MO
15693	Legends Bank	Linn	MO
55182	Farmers Bank of Lohman, Missouri	Lohman	MO
14765	First National Bank	Malden	MO
12938	Wood & Huston Bank	Marshall	MO
16888	Community Bank of Marshall	Marshall	MO
12915	Central Bank of Audrain County	Mexico	MO
55233	Community National Bank	Monett	MO
13037	Peoples Bank of the Ozarks	Nixa	MO
55127	Bank CBO	Oregon	MO
14925	First Midwest Bank of the Ozarks	Piedmont	MO
55143	Community Bank of Pleasant Hill	Pleasant Hill	MO
12921	Peoples Savings Bank of Rhineland	Rhineland	MO
13154	State Bank (The)	Richmond	MO
55026	Riverways Federal Credit Union	Rolla	MO
16435	First State Bank of St. Charles, Missouri	Saint Charles	MO
55273	Southpointe Credit Union	Saint Louis	MO
12740	Town & Country Bank	Salem	MO
14995	Farmers State Bank, S/B	Schell City	MO
16285	Third National Bank	Sedalia	MO
16891	Senath State Bank	Senath	MO
16478	Old Missouri Bank	Springfield	MO
55040	CU Community Credit Union	Springfield	MO
16494	Midwest BankCentre	St. Louis	MO
55220	CIT Insurance Company Limited	St. Louis	MO
55310	Capital Credit Union	Bismarck	ND
16154	First State Bank of Cando	Cando	ND
13132	Citizens State Bank—Midwest	Cavalier	ND
55039	Citizens Community Credit Union	Devils Lake	ND
55218	Dakota Plains Credit Union	Edgeley	ND
16519	Union State Bank of Fargo	Fargo	ND
16479	State Bank & Trust of Kenmare	Kenmare	ND
16529	Farmers and Merchants State Bank	Langdon	ND
55141	Citizens State Bank of Lankin	Lankin	ND
16977	First Western Bank & Trust	Minot	ND
16486	Lakeside State Bank	New Town	ND
16575	McKenzie County Bank	Watford City	ND
55027	State Bank of Eagle Butte	Eagle Butte	SD
16027	BankStar Financial	Elkton	SD
16223	Dakotaland Federal Credit Union	Huron	SD
887	Home Federal Bank	Sioux Falls	SD
55056	Service First Federal Credit Union	Sioux Falls	SD
55280	Security State Bank	Tyndall	SD
55080	Vermillion Federal Credit Union	Vermillion	SD
13343	Great Western Bank	Watertown	SD
16600	First State Bank	Wilmot	SD
	Federal Home Loan Bank of Dallas—District 9		
16342	First Community Bank	Batesville	AR
16010	Farmers Bank & Trust Company	Blytheville	AR
16535	Centennial Bank	Conway	AR
16791	River Town Bank	Dardanelle	AR

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2597	First Financial Bank	El Dorado	AR
11303	FBT Bank & Mortgage	Fordyce	AR
2407	Forrest City Bank, NA	Forrest City	AR
16263	Benefit Bank	Ft. Smith	AR
16880	Today's Bank	Huntsville	AR
16437	Allied Bank	Mulberry	AR
16583	First National Bank At Paris	Paris	AR
15840	Delta Trust & Bank	Parkdale	AR
11395	Relyance Bank	Pine Bluff	AR
16172	Red River Bank	Alexandria	LA
16453	E Federal Credit Union	Baton Rouge	LA
55088	Pelican State Credit Union	Baton Rouge	LA
13335	Bank of Coushatta	Coushatta	LA
3691	Heritage Bank of St. Tammany	Covington	LA
16916	City Savings Bank & Trust Company	DeRidder	LA
3862	Florida Parishes Bank	Hammond	LA
16173	Synergy Bank	Houma	LA
16610	Coastal Commerce Bank	Houma	LA
55265	JD Bank	Jennings	LA
165	Mutual Savings and Loan Association	Metairie	LA
3193	Eureka Homestead	New Orleans	LA
4160	Hibernia Bank	New Orleans	LA
15605	Peoples Bank and Trust Company	New Roads	LA
13234	American Gateway Bank	Port Allen	LA
16349	Richland State Bank	Rayville	LA
16879	Bank of Ringgold	Ringgold	LA
3912	Bank of Ruston	Ruston	LA
55007	Shreveport Federal Credit Union	Shreveport	LA
13122	Bank of St. Francisville	St. Francisville	LA
13288	The Bank of Commerce	White Castle	LA
2674	Amory FS & LA	Amory	MS
16386	The Peoples Bank	Biloxi	MS
16920	Bank of Brookhaven	Brookhaven	MS
16145	The Cleveland State Bank	Cleveland	MS
16556	Commerce Bank	Corinth	MS
16031	Bank of Holly Springs	Holly Springs	MS
16357	Sycamore Bank	Senatobia	MS
15924	Mechanics Bank	Water Valley	MS
13830	Fnb in Alamogordo	Alamogordo	NM
55272	First Financial Credit Union	Albuquerque	NM
13081	International Bank	Raton	NM
55070	State Employees Credit Union	Santa Fe	NM
2842	Tucumcari FS & LA	Tucumcari	NM
55147	North East Texas Credit Union	Lone Star	TX
55264	First Financial Bank, National Association	Abilene	TX
55274	Communities of Abilene Federal Credit Union	Abilene	TX
55318	National Teachers Associates Life Insurance Company	Addison	TX
55211	Access Community Credit Union	Amarillo	TX
16855	First State Bank	Athens	TX
55037	Greater Texas Federal Credit Union	Austin	TX
54980	A+ Credit Union	Austin	TX
55256	Texas Hill Country Bank	Bandera	TX
16544	Community Resource Credit Union	Baytown	TX
55043	DuGood Federal Credit Union	Beaumont	TX
13317	Texas Heritage Bank	Boerne	TX
12679	Fannin Bank	Bonham	TX
55089	Coastal Community and Teachers Credit Union	Corpus Christi	TX
15440	Zavala County Bank	Crystal City	TX
3102	NexBank, SSB	Dallas	TX
9986	PlainsCapital Bank	Dallas	TX
16190	Credit Union of Texas	Dallas	TX
55030	City Credit Union	Dallas	TX
15741	First United Bank	Dimmitt	TX
16324	First National Bank of Dublin	Dublin	TX
55146	Commercial State Bank	El Campo	TX
54995	Evolve Federal Credit Union	El Paso	TX
55093	Frontier Bank of Texas	Elgin	TX
12857	Union State Bank	Florence	TX
15824	OmniAmerican Bank	Fort Worth	TX
16380	Community Bank	Fort Worth	TX
16512	Texas Republic Bank, N.A.	Frisco	TX
55285	Citizens National Bank	Henderson	TX
16220	Community National Bank	Hondo	TX

Docket # (FHFAID)	Member	City	State
15662	Central Bank	Houston	TX
16628	Reliance Standard Life Insurance Company of Texas	Houston	TX
16899	Southwestern National Bank	Houston	TX
55063	American General Life Insurance Company	Houston	TX
55065	The Variable Annuity Life Insurance Company	Houston	TX
55044	Memorial City Bank	Houston	TX
54999	Energy Capital Credit Union	Houston	TX
16121	Austin Bank, Texas N.A.	Jacksonville	TX
13097	Texas State Bank	Joaquin	TX
16513	Pinnacle Bank	Keene	TX
13238	First National Bank of Lake Jackson	Lake Jackson	TX
5117	First Federal Bank Littlefield, Texas	Littlefield	TX
14756	Mason Bank	Mason	TX
16558	Security Bank	Midland	TX
55215	My Community Federal Credit Union	Midland	TX
55294	Bank of Texas	Midland	TX
2523	Mineola Community Bank, SSB	Mineola	TX
55076	Titan Bank, N.A.	Mineral Wells	TX
16241	The American National Bank of Mt. Pleasant	Mount Pleasant	TX
11054	COMMERCIAL BANK OF TEXAS, N.A.	Nacogdoches	TX
55203	Southwest Bank	Odessa	TX
55151	Heritage Bank	Pearland	TX
15015	Lone Star National Bank	Pharr	TX
8474	Beal Bank, SSB	Plano	TX
55164	Catalyst Corporate Federal Credit Union	Plano	TX
55311	Prosper Bank	Prosper	TX
54994	R Bank	Round Rock	TX
55278	River City Federal Credit Union	San Antonio	TX
55159	Alamo Federal Credit Union	San Antonio	TX
55312	The Bank of San Antonio	San Antonio	TX
55126	Air Force Federal Credit Union	San Antonio	TX
55255	Commerce Bank Texas	Stockdale	TX
16354	Extraco Banks, National Association	Temple	TX
16580	Woodforest National Bank	The Woodlands	TX
15059	First National Bank of Trinity	Trinity	TX
16605	Citizens State Bank	Tyler	TX
10253	First National Bank of Bosque County	Valley Mills	TX
16320	The First N.B. of Central Texas	Waco	TX
16542	Community Bank & Trust	Waco	TX
55148	Members Choice of Central Texas Federal Credit Union	Waco	TX
	Federal Home Loan Bank of Topeka—District 10		
14815	Premier Members Federal Credit Union	Boulder	CO
16525	First National Bank, Cortez	Cortez	CO
2853	Del Norte Bank, a Savings and Loan Association	Del Norte	CO
15753	Premier Bank	Denver	CO
16155	Citywide Banks—Aurora, CO	Denver	CO
16231	Rocky Mountain Law Enforcement Credit Union	Denver	CO
54973	Credit Union of Colorado, a Federal Credit Union	Denver	CO
16395	FMS Bank	Fort Morgan	CO
15775	Points West Community Bank	Julesburg	CO
13278	The State Bank—La Junta—La Junta, CO	La Junta	CO
16586	Home State Bank	Loveland	CO
55074	Colorado National Bank	Palisade	CO
16336	First Colorado National Bank	Paonia	CO
55099	Power Credit Union	Pueblo	CO
55228	Sterling Federal Credit Union	Sterling	CO
55243	System United Corporate Federal Credit Union	Westminster	CO
54974	B.C.S. Community Credit Union	Wheat Ridge	CO
55222	Almena State Bank	Almena	KS
55223	The Valley State Bank	Belle Plaine	KS
1227	Home Savings Bank—Chanute, KS	Chanute	KS
13456	Bank of Commerce—Chanute, KS	Chanute	KS
15958	Farmers & Merchants Bank of Colby—Colby, KS	Colby	KS
14923	Legacy Bank	Colwich	KS
16393	Farmers and Drovers Bank—Council Grove, KS	Council Grove	KS
13160	Citizens State Bank & Trust Co.—Ellsworth, KS	Ellsworth	KS
55175	The Dickinson County Bank	Enterprise	KS
55046	Kaw Valley State Bank	Eudora	KS
14937	State Bank of Fredonia—Fredonia, KS	Fredonia	KS
11205	Gardner Bank	Gardner	KS
16230	Community Bank of the Midwest	Great Bend	KS

Docket # (FHFAID)	Member	City	State
16183	The Halstead Bank—Halstead, KS	Halstead	KS
55125	Central Kansas Credit Union	Hutchinson	KS
16332	Security Bank of Kansas City—Kansas City, KS	Kansas City	KS
16181	Douglas County Bank—Lawrence, KS	Lawrence	KS
16397	National Bank of Kansas City	Leawood	KS
55192	Leonardville State Bank	Leonardville	KS
16863	The Lyons State Bank	Lyons	KS
16335	The Farmers State Bank—McPherson, KS	McPherson	KS
16398	The Mission Bank—Mission, KS	Mission	KS
16964	Carson Bank	Mulvane	KS
13340	The Farmers State Bank of Oakley—Oakley, KS	Oakley	KS
55224	The Olpe State Bank	Olpe	KS
16410	Valley View State Bank—Overland Park, KS	Overland Park	KS
16392	Citizens State Bank—Paola, KS	Paola	KS
16003	University Bank	Pittsburg	KS
16474	TriCentury Bank	Simpson	KS
14978	First Bank	Sterling	KS
16184	The Valley State Bank—Syracuse, KS	Syracuse	KS
16950	The Tampa State Bank	Tampa	KS
16246	Kaw Valley Bank	Topeka	KS
16420	Community Bank	Topeka	KS
13257	Chisholm Trail State Bank—Wichita, KS	Wichita	KS
16883	Intrust Bank, National Association	Wichita	KS
16442	Bank of the Valley	Bellwood	NE
13240	Bank of Bennington—Bennington, NE	Bennington	NE
14931	Washington County Bank—Blair, NE	Blair	NE
1806	Custer Federal State Bank	Broken Bow	NE
16584	First Central Bank—Cambridge, NE	Cambridge	NE
13208	Citizens State Bank—Carleton, NE	Carleton	NE
14597	CerescoBank—Ceresco, NE	Ceresco	NE
15945	First Bank and Trust Company—Cozad, NE	Cozad	NE
16381	Jefferson County Bank—Daykin, NE	Daykin	NE
15724	Generations Bank	Exeter	NE
55193	Richardson County Bank & Trust Company	Falls City	NE
15666	First State Bank	Farnam	NE
13449	First State Bank—Fremont, NE	Fremont	NE
16908	Gothenburg State Bank	Gothenburg	NE
16651	Five Points Bank of Hastings	Hastings	NE
15020	Henderson State Bank—Henderson, NE	Henderson	NE
55248	Ameritas Employees Credit Union	Lincoln	NE
55067	University of Nebraska Federal Credit Union	Lincoln	NE
16882	Farmers State Bank	Maywood	NE
16955	First Central Bank McCook, NA	McCook	NE
55176	Commercial Bank	Nelson	NE
14619	Core Bank	Omaha	NE
16015	First National Bank of Omaha	Omaha	NE
55084	Petersburg State Bank	Petersburg	NE
16176	The Potter State Bank of Potter—Potter, NE	Potter	NE
55313	State Nebraska Bank & Trust	Wayne	NE
15019	Citizens Bank of Ada—Ada, OK	Ada	OK
16475	The First National Bank in Altus	Altus	OK
55226	BancCentral, National Association	Alva	OK
9945	The Fnb And Trust Co. of Broken Arrow	Broken Arrow	OK
16041	Farmers Exchange Bank—Cherokee, OK	Cherokee	OK
16281	The First National Bank And Trust Co.	Chickasha	OK
9266	Kirkpatrick Bank	Edmond	OK
16627	Bank of Western Oklahoma—Elk City, OK	Elk City	OK
1532	Liberty Federal Savings Bank—Enid, OK	Enid	OK
2049	Fairview S&La	Fairview	OK
14250	Stockmans Bank—Altus, OK	Gould	OK
16235	Oklahoma State Bank—Guthrie, OK	Guthrie	OK
13283	The City NB&T Company of Guymon	Guymon	OK
14839	The Bank of Kremlin—Kremlin, OK	Kremlin	OK
15647	Liberty National Bank	Lawton	OK
55028	The First National Bank of Lindsay	Lindsay	OK
15929	The Morris State Bank—Morris, OK	Morris	OK
55066	Great Nations Bank	Norman	OK
55314	State Guaranty Bank	Okeene	OK
16266	Oklahoma Educators Credit Union—Oklahoma City, OK	Oklahoma City	OK
16881	First Security Bank And Trust Company	Oklahoma City	OK
55053	American Benefit Life Insurance Company	Oklahoma City	OK
13117	NBC Bank—Pawhuska, OK	Pawhuska	OK
16443	Exchange Bank and Trust Company—Perry, OK	Perry	OK

Docket # (FHFAID)	Member	City	State
16114	The Central National Bank of Poteau	Poteau	OK
15705	First National Bank of Pryor Creek—Pryor, OK	Pryor	OK
15697	Peoples Bank & Trust Company—Ryan, OK	Ryan	OK
16016	Southwest State Bank—Sentinel, OK	Sentinel	OK
15877	Advantage Bank	Spencer	OK
14419	Bank of Commerce—Stilwell, OK	Stilwell	OK
16110	American Bank and Trust Company	Tulsa	OK
16858	Security Bank	Tulsa	OK
13492	Sooner State Bank—Tuttle, OK	Tuttle	OK
14420	First State Bank—Valliant, OK	Valliant	OK
13339	First State Bank—Watonga, OK	Watonga	OK
14454	Peoples Bank—Westville, OK	Westville	OK
16333	The Bank of Wyandotte—Wyandotte, OK	Wyandotte	OK
16537	YNB	Yukon	OK
Federal Home Loan Bank of San Francisco—District 11			
55191	First Credit Union	Chandler	AZ
55134	Arizona Central Credit Union	Phoenix	AZ
55206	First Scottsdale Bank, National Association	Scottsdale	AZ
15981	Burbank City Federal Credit Union	Burbank	CA
15953	Banc Of California, National Association	Irvine	CA
16455	Financial Partners Credit Union	Downey	CA
13217	Murphy Bank	Fresno	CA
55308	UNCLE Credit Union	Livermore	CA
16566	USC Credit Union	Los Angeles	CA
15954	Simplicity Bank	Pasadena	CA
55269	E-Central Credit Union	Pasadena	CA
16467	Heritage Oaks Bank	Paso Robles	CA
16377	Provident Credit Union	Redwood Shores	CA
6051	Provident Savings Bank	Riverside	CA
16956	Five Star Bank	Rocklin	CA
13753	River City Bank	Sacramento	CA
15688	First U.S. Community Credit Union	Sacramento	CA
16008	Neighborhood National Bank	San Diego	CA
16376	Bank of The Orient	San Francisco	CA
16608	Pacific Coast Bankers Bank	San Francisco	CA
55292	State Compensation Insurance Fund	San Francisco	CA
16213	Meriwest Credit Union	San Jose	CA
16646	SchoolsFirst Federal Credit Union	Santa Ana	CA
16127	Santa Cruz Community Credit Union	Santa Cruz	CA
16038	Bank of Stockton	Stockton	CA
5801	Universal Bank	West Covina	CA
Federal Home Loan Bank of Seattle—District 12			
15956	Credit Union 1	Anchorage	AK
55293	Northern Skies Federal Credit Union	Anchorage	AK
55257	True North Federal Credit Union	Juneau	AK
55244	ALPS Federal Credit Union	Sitka	AK
13403	ANZ Guam, Inc.	Agana	GU
55266	Ohana Pacific Bank	Honolulu	HI
55052	University of Hawaii Credit Union	Honolulu	HI
55078	Hawaii Pacific Credit Union	Honolulu	HI
55186	Hotel and Travel Industry Federal Credit Union	Honolulu	HI
55119	Idaho Central Credit Union	Chubbuck	ID
55258	Westmark Credit Union	Idaho Falls	ID
55202	Kamiah Community Credit Union	Kamiah	ID
55187	Pioneer Federal Credit Union	Mountain Home	ID
16563	Panhandle State Bank	Sandpoint	ID
16505	First Citizens Bank of Butte	Butte	MT
16006	Dutton State Bank	Dutton	MT
16237	Valley Bank of Glasgow	Glasgow	MT
16565	1st Liberty Federal Credit Union	Great Falls	MT
16131	Independence Bank	Havre	MT
55326	Rocky Mountain Credit Union	Helena	MT
14960	Manhattan State Bank	Manhattan	MT
55300	Eagle Bank	Polson	MT
13504	Community Bank, Inc.	Ronan	MT
16902	Basin State Bank	Stanford	MT
55018	Park Side Financial Credit Union	Whitefish	MT
55325	Rivermark Community Credit Union	Beaverton	OR
2610	Evergreen FS & LA	Grants Pass	OR

Docket # (FHFAID)	Member	City	State
13260	Bank of Eastern Oregon	Heppner	OR
55342	Great Western Insurance Company	Ogden	UT
55117	Transportation Alliance Bank, Inc.	Ogden	UT
55245	Granite Federal Credit Union	Salt Lake City	UT
55213	Cyprus Credit Union	West Jordan	UT
55118	Great Northwest Credit Union	Aberdeen	WA
4347	Riverview Community Bank	Camas	WA
14623	The Bank of Washington	Edmonds	WA
16274	Fife Commercial Bank	Fife	WA
1925	Olympia FS & LA	Olympia	WA
16193	TwinStar Credit Union	Olympia	WA
1528	First FS & LA of Port Angeles	Port Angeles	WA
16484	Seattle Savings Bank	Seattle	WA
16506	Our Community Federal Credit Union	Shelton	WA
921	Yakima FS & LA	Yakima	WA
55069	Solarity Credit Union	Yakima	WA
3903	Buffalo Federal Bank	Buffalo	WY
10647	Hilltop National Bank	Casper	WY
55077	Wyhy Credit Union	Cheyenne	WY
3790	Big Horn Federal Savings Bank	Greybull	WY
15949	Oregon Trail Bank	Guernsey	WY
9491	Rocky Mountain Bank	Rock Springs	WY
13484	RSNB Bank	Rock Springs	WY
15713	Pinnacle Bank—Wyoming	Torrington	WY

II. Public Comments

To encourage the submission of public comments on the community support performance of Bank members, on or before November 17, 2014, each Bank will notify its Advisory Council, nonprofit housing developers, community groups and other interested parties in its district of the members of the Bank selected for this review cycle. 12 CFR 1290.2(b)(2)(ii). In reviewing a member for community support compliance, FHFA will consider any public comments it has received concerning the member. 12 CFR 1290.2(d). To ensure consideration by FHFA, comments concerning the community support performance of members selected for this review cycle must be submitted to FHFA, either by electronic mail to *hmgcommunitysupportprogram@fhfa.gov,* or by fax to 202–649–4130, on or before December 15, 2014.

Dated: October 27, 2014.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

[FR Doc. 2014–25970 Filed 10–30–14; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Bijan Ahvazi, Ph.D., National Institutes of Health: Based on the report of an investigation conducted by the National Institutes of Health (NIH) and additional analysis by ORI in its oversight review, ORI found that Dr. Bijan Ahvazi, former Director of the Laboratory of X-ray Crystallography, National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS), NIH, engaged in research misconduct in research supported by the Intramural Program at NIAMS, NIH.

ORI found that Respondent engaged in research misconduct by falsifying data related to or in the following published papers:

1. Ahvazi, B., Boeshans, K.M., Idler, W., Baxa, U., & Steinert, P.M. ''Structural basis for the coordinated regulation of transglutaminase 3 by guanine nucleotides and calcium/magnesium.'' *J. Biol. Chem.* 279(8):7180–92, 2004 Feb 20 (withdrawn) (hereinafter ''*JBC* 2004a'')

2. Ahvazi, B., Boeshans, K.M., & Steinert, P.M. ''Crystal structure of transglutaminase 3 in complex with BMP: Structural basis for nucleotide specificity.'' *J. Biol. Chem.* 279:26716–25, 2004 (withdrawn) (hereinafter ''*JBC* 2004b'')

3. Ahvazi, B., Boeshans, K.M., Idler, W.,& Cooper, A.J.L. ''Crystal structure of transglutaminase 3-cystamine complex: Binding of two cystamines to the nucleotide-binding pocket. M6:06060, Submitted to *J. Biol. Chem.,* 2006 (rejected) (hereinafter ''*JBC* 2006'').

Specifically, ORI finds that Respondent:

1. Falsely labeled Figure 3A in *JBC* 2004b representing an isothermal calorimetric titration (ITC) experiment using guanine monophosphate (GMP) and transglutaminase 3 (TGase 3) when the figure was actually a relabeled version of an unrelated experiment that Respondent previously published as Figure 1A in *JBC* 2004a.

2. falsified Figure 4B, Figure 4C, and Figure 6D in *JBC* 2004b and Figure 5E in *JBC* 2006, by altering the original data in the following ways to represent the desired experiment:

a. Falsified Figure 4B in *JBC* 2004b, by adding multiple data points to titration curves for four different concentrations of TGase 3 bound by different concentrations of tagged GTPγS and deleting two (2) outlying data points from one of the curves

b. falsified Figure 4C in *JBC* 2004 b, representing a competition assay for the release of tagged GTPγS bound to TGase 3, by (1) falsely claiming that the release of the tagged nucleotide occurred with the addition of untagged GMP, when the result was from an assay using untagged GDP, (2) adding additional data points onto the titration curves, and (3) altering the scale of the abscissa

c. falsified Figure 6D in *JBC* 2004b, by using the false Figure 4B to also represent an additional competition experiment using unmodified nucleotide analog compounds and

ATP; specifically, Respondent (1) falsified the units and labels of the axes, (2) falsified the labels of the curves, and (3) vertically inverted the curves

d. falsified Figure 5E in the *JBC* 2006 manuscript, representing a competition experiment for the release of tagged GTPγS bound to TGase 3 with the addition of cystamine, when the actual experiment was a competition experiment with the addition of untagged nucleotides.

Dr. Ahvazi has entered into a Voluntary Settlement Agreement (Agreement) and has voluntarily agreed for a period of two (2) years, beginning on October 7, 2014:

(1) To have his U.S. Public Health Service (PHS) research supervised and to notify any employer(s)/institution(s) at which he may participate in PHS funded projects of the terms of his supervision; Respondent agrees that prior to the submission of an application for PHS support for a research project on which the Respondent's participation is proposed and prior to Respondent's participation in any capacity on PHS-supported research, Respondent shall ensure that a plan for supervision of Respondent's duties is submitted to ORI for approval; the supervision plan must be designed to ensure the scientific integrity of Respondent's research; Respondent agrees that he shall not participate in any PHS-supported research until such a supervision plan is submitted to and approved by ORI; Respondent agrees to maintain responsibility for compliance with the agreed upon supervision plan;

(2) that any institution employing him to work on PHS-supported projects shall submit, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported in the application, report, manuscript, or abstract; and

(3) to exclude himself voluntarily from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Acting Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8200.

Donald Wright,

Acting Director, Office of Research Integrity.

[FR Doc. 2014–25887 Filed 10–30–14; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Intent To Award Ebola Response Outbreak Funding to Eligible Ministries of Health and Their Bona Fide Agents

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice provides public announcement of CDC's intent to award Ebola appropriations to select Ministries of Health and their bona fide agents for response to the Ebola outbreak funding. This award was proposed in Fiscal Year (FY) 2015 under funding opportunity announcement GH14–1418, ''Protecting and Strengthening Public Health Impact, Systems, Capacity, and Security.''

This notice replaces the Notice of Intent to award Ebola Response outbreak funding to eligible Ministries of Health and their bona fide agents which was published on October 22, 2014 (79 FR 63126, October 22, 2014). CDC is correcting the application date, award dates, amount of funding available, and one of the points of contact.

Catalogue of Federal Domestic Assistance Number (CFDA): 93.318.

Authority: Public Health Service 301(a) and 307 as amended [42 U.S.C 241 and 242*l*].

Multiple awards may be awarded to grantees totaling $300,000 to $1,500,000 per award for the Ebola response outbreak.

Funding is appropriated under the Continuing Appropriations Resolution, 2015, Public Law 113–164, 128 Stat. 1867 (2014).

DATES: Anticipated award date is 12/11/2014.

Application Due Date: 12/1/2014.

Project Number is CDC–RFA–GH14–1418.

ADDRESSES: CDC has waived the Grants.gov electronic submission process for this requirement. Recipients are hereby authorized to submit a paper copy application for (CDC–RFA–GH14–1418) via Express Mail (i.e. FedEx, UPS, or DHL) and send the application via email. Mailed applications must be address to Dionne Bounds, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341, telephone (770) 488–2082, or email at *DBounds@cdc.gov.* The application must include a detailed line-item budget and justification to support the Ebola activities from December 11, 2014 to September 29, 2015. Please download the following to complete the application package: *http://apply07.grants.gov/apply/forms/sample/SF424_2_1-V2.1.pdf*—Application Package; *http://www.cdc.gov/od/pgo/funding/docs/CertificationsForm.pdf*—Certifications; *http://www.cdc.gov/od/pgo/funding/grants/Budget_Preparation_Guidelines_8-2-12.docx*—CDC–PGO Budget Guidelines; *http://apply07.grants.gov/apply/forms/sample/SF424A-V1.0.pdf*—SF–424A Budget Information.

All applications must be submitted to and received by the Grants Management Officer (GMO) no later than 11:59 p.m. EST on December 1, 2014 and please provide the GMO a PDF version of the application by email to the following email address: *ogsghebolaresponse@cdc.gov* subject line: CDC–RFA–GH14–1418.

Applicants will be provided with the Funding Opportunity Announcement (FOA) and additional application submission guidance via email notification. Applicants may contact the POCs listed with questions regarding the application process.

FOR FURTHER INFORMATION CONTACT:

For programmatic or technical assistance: Kawi Mailutha, Project Officer, Department of Health and Human Services, Centers for Disease Control and Prevention, 1600 Clifton Rd. MS E–29, Atlanta, GA 30333, Telephone: 404–639–8093, E-Mail: *KMailutha@cdc.gov.*

For financial, awards management, or budget assistance: Dionne Bounds, Grants Management Officer, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341, Telephone (770) 488–2082, Email: *DBounds@cdc.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this notice is to solicit applications from eligible Ministries of Health and their bona fide agents to quickly arrest the spread of the Ebola virus in West Africa and contain the disease as quickly as possible. The funding will support the impacted countries and the surrounding countries to combat this health crisis. This funding will target the following countries: Liberia, Sierra Leone, Guinea,

Mauritania, Mali, Senegal, Guinea Bissau, Ghana, Gambia, Cote d'Ivoire, Togo, Benin, Burkina Faso, Niger and Nigeria to support the responses of the CDC to the outbreak of Ebola virus in West Africa. This funding will enable the U.S. to provide unified mobilization to address a crisis of this magnitude. CDC will continue to build partnerships and strengthen existing projects to respond to Ebola. CDC and its partners will help to address the need for surveillance, detection, coordination, response, and increase eligible governments' capacity to respond to the Ebola outbreak.

Award Information

Type of Award: Cooperative Agreement.

Approximate Total Current Fiscal Year Funding: $10,000,000.

Anticipated Number of Awards: Multiple.

Fiscal Year Funds: 2015.

Anticipated Award Date: December 11, 2014.

Application Selection Process: Funding will be awarded to applicant based on results from the technical review recommendation.

Dated: October 28, 2014.

Ron A. Otten,

Acting Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2014–25920 Filed 10–28–14; 11:15 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1615–FN]

Medicare Program; Approval of Request for an Exception to the Prohibition on Expansion of Facility Capacity Under the Hospital Ownership and Rural Provider Exceptions to the Physician Self-Referral Prohibition

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: This final notice announces our decision to approve the request from Lake Pointe Medical Center for an exception to the prohibition against expansion of facility capacity.

DATES: *Effective Date:* This notice is effective on October 31, 2014.

FOR FURTHER INFORMATION CONTACT: Patricia Taft, (410) 786–4561 or Teresa Walden, (410) 786–3755.

SUPPLEMENTARY INFORMATION:

I. Background

Unless the requirements of an applicable exception are satisfied, section 1877 of the Social Security Act (the Act), also known as the physician self-referral law—(1) prohibits a physician from making referrals for certain ''designated health services'' (DHS) payable by Medicare to an entity with which he or she (or an immediate family member) has a financial relationship (ownership or compensation); and (2) prohibits the entity from filing claims with Medicare (or billing any individual, third party payer, or other entity) for those DHS furnished as a result of a prohibited referral. Section 1877(d)(3) of the Act provides an exception, known as the ''whole hospital exception,'' for physician ownership or investment interests held in a hospital located outside of Puerto Rico, provided that the referring physician is authorized to perform services at the hospital and the ownership or investment interest is in the hospital itself (and not merely in a subdivision of the hospital). Section 1877(d)(2) of the Act provides an exception for physician ownership or investment interests in rural providers (the ''rural provider exception''). In order for an entity to qualify for the rural provider exception, the DHS must be furnished in a rural area (as defined in section 1886(d)(2) of the Act) and substantially all the DHS furnished by the entity must be furnished to individuals residing in a rural area.

Section 6001(a)(3) of the Patient Protection and Affordable Care Act (Pub. L. 111–148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (hereafter referred to together as ''the Affordable Care Act'') amended the whole hospital and rural provider exceptions to the physician self-referral prohibition to impose additional restrictions on physician ownership and investment in hospitals and rural providers. Since March 23, 2010, a physician-owned hospital that seeks to avail itself of either exception is prohibited from expanding facility capacity unless it qualifies as an ''applicable hospital'' or ''high Medicaid facility'' (as defined in sections 1877(i)(3)(E), (F) of the Act and 42 CFR 411.362(c)(2), (3) of our regulations) and has been granted an exception to the facility expansion prohibition by the Secretary. Section 1877(i)(3)(A)(ii) of the Act provides that individuals and entities in the community in which the provider requesting the exception is located must have an opportunity to provide input with respect to the provider's application for the exception. Section 1877(i)(3)(H) of the Act states that the Secretary shall publish in the **Federal Register** the final decision with respect to an application for an exception to the prohibition against facility expansion not later than 60 days after receiving a complete application.

For further information on the physician-owned hospital expansion exception process, visit our Web site at: *http://www.cms.gov/Medicare/Fraud-and-Abuse/PhysicianSelfReferral/Physician_Owned_Hospitals.html.*

II. Exception Approval Process

On November 30, 2011, we published a final rule in the **Federal Register** (76 FR 74122, 74517 through 74525) that, among other things, finalized § 411.362(c), which specified the process for submitting, commenting on, and reviewing a request for an exception to the prohibition on expansion of facility capacity. We specified that prior to our review of the request, we will solicit community input on the request for an exception by publishing a notice of the request in the **Federal Register** (see § 411.362(c)(5)). We also stated that individuals and entities in the hospital's community have 30 days to submit comments on the request. Community input must take the form of written comments and may include documentation demonstrating that the physician-owned hospital requesting the exception does or does not qualify as an ''applicable hospital'' or ''high Medicaid facility,'' as such terms are defined in § 411.362(c)(2) and (3). Although we gave examples of community input, such as documentation demonstrating that the hospital does not satisfy one or more of the data criteria or that the hospital discriminates against beneficiaries of Federal health care programs, we noted that these were examples only and that we would not restrict the type of community input that may be submitted (76 FR 74522). If we receive timely comments from the community, we will notify the hospital, and the hospital has 30 days after such notice to submit a rebuttal statement (§ 411.362(c)(5)(ii)).

A request for an exception to the facility expansion prohibition is considered complete and ready for CMS review if no comments from the community are received by the close of the 30-day comment period. If we receive timely comments from the community, we consider the request to be complete 30 days after the hospital is notified of the comments. If we grant the request for an exception to the prohibition on expansion of facility

capacity, the expansion may occur only in facilities on the hospital's main campus and may not result in the number of operating rooms, procedure rooms, and beds for which the hospital is licensed exceeding 200 percent of the hospital's baseline number of operating rooms, procedure rooms, and beds (§ 411.362(c)(6)). Our decision to grant or deny a hospital's request for an exception to the prohibition on expansion of facility capacity will be published in the **Federal Register** in accordance with our regulations at § 411.362(c)(7).

III. Public Response to Notice With Comment Period

On May 12, 2014, we published a notice in the **Federal Register** (79 FR 26969) entitled, Request for an Exception to the Prohibition on Expansion of Facility Capacity under the Hospital Ownership and Rural Provider Exceptions to the Physician Self-Referral Prohibition. In the May 12, 2014 notice we stated that as permitted by section 1877(i)(3) of the Act and our regulations at § 411.362(c), the following physician-owned hospital requested an exception to the prohibition on expansion of facility capacity:

Name of Facility: Lake Pointe Medical Center.

Location: 6800 Scenic Drive, Rowlett, Texas 75088–4552 (Rockwall County).

Basis for Exception Request: High Medicaid Facility.

In the May 12, 2014 notice we also solicited comments from individuals and entities in the community in which Lake Pointe Medical Center is located. Eighty-four comments were submitted under docket number for the notice (CMS–2014–0061). Eighty-three of those comments advocated that a different physician-owned hospital in another county be allowed to expand under the expansion exception process. Those comments were not relevant to the Lake Pointe Medical Center request, and we have not considered them in deciding the request. The only remaining comment urged CMS to evaluate whether Lake Pointe Medical Center is a ''high Medicaid facility'' using data that our regulations do not permit us to consider.

On August 4, 2014, as required by § 411.362(c)(5)(ii), we notified Lake Pointe Medical Center that we received comments in response to the May 12, 2014 notice and that these comments were available for public viewing at *http://www.regulations.gov.* Lake Pointe Medical Center submitted a rebuttal statement on August 13, 2014. The statement indicated that the comments raised no issues of law or fact that in any way contradict Lake Pointe Medical Center's assertion that it meets all of the statutory and regulatory requirements to qualify as a high Medicaid facility. On September 3, 2014, at the close of the 30-day rebuttal period, CMS deemed the request complete pursuant to § 411.362(c)(5)(ii).

IV. Decision

This final notice announces our decision to approve the request from Lake Pointe Medical Center for an exception to the prohibition against expansion of facility capacity. As set forth in our current regulations and public guidance documents, Lake Pointe Medical Center submitted the data and certifications necessary to demonstrate that it satisfies the criteria to qualify as a high Medicaid facility. Further, our regulations do not permit us to consider the data recommended by the one relevant comment. Therefore, in accordance with section 1877(i)(3) of the Act, we have granted the request from Lake Pointe Medical Center for an exception to the expansion of facility capacity prohibition based on the following criteria:

- The hospital is not the sole hospital in Rockwall, Texas, the county in which it is located;
- The hospital certified that it does not discriminate against beneficiaries of Federal health care programs and does not permit physicians practicing at the hospital to discriminate against such beneficiaries; and
- With respect to each of the 3 most recent fiscal years for which data were available as of the date the hospital submitted its request, the hospital has an annual percent of total inpatient admissions under Medicaid that is estimated to be greater than such percent with respect to such admissions for any other hospital located in Rockwall County, Texas, the county in which the hospital is located.

Our approval grants the request of Lake Pointe Medical Center to add a total of 36 beds. Pursuant to § 411.362(c)(6), the expansion may occur only in facilities on the hospital's main campus and may not result in the number of operating rooms, procedure rooms, and beds for which the hospital is licensed exceeding 200 percent of the hospital's baseline number of operating rooms, procedure rooms, and beds. Lake Pointe Medical Center certified that its baseline number of operating rooms, procedure rooms, and beds for which it was licensed as of March 23, 2010, was 129. Accordingly, we find that granting the additional 36 beds will not result in an aggregate number of operating rooms, procedure rooms, and beds for which the hospital is licensed that exceeds 200 percent of the hospital's baseline.

IV. 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 (44 U.S.C. 35).

Dated: October 22, 2014.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2014–25940 Filed 10–30–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of Modified System of Records

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice of a Modified System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to modify an existing SOR titled, ''Chronic Condition Data Repository (CCDR), System No. 09–70–0573'' last published at 71 FR 54495, September 15, 2006. The current name of the SOR, Chronic Condition Data Repository, was developed during the planning and development stages of the system. Upon the implementation and throughout the operations and maintenance stages of the system, the system has been referred to as the Chronic Condition Warehouse (CCW) in common usage and written references. In keeping with this current usage, we will modify the name of this SOR to read, and from this point forward will refer to the system as: ''Chronic Condition Warehouse (CCW).''

We propose to broaden the scope of the system to include data that can be easily linked, at the individual patient level, to all Medicare and Medicaid claims, enrollment and/or eligibility data, nursing home and home health assessments, and CMS beneficiary survey data. Accordingly, we are updating the Authority Section to include Title XVIII of the Social Security Act as amended (the Act); Section 1902(a)(6) of the Act; Section

1142(c)(6) of the Act; and Title IV of the Balanced Budget Act (Pub. L. 105–33). The Record Source Categories section will be modified to include data from two new systems of records: the CMS Encounter Data System, System No. 09–70–0506, and the National Death Index, System No. 09–20–0166. These modifications will make the CCW a more useful tool by which to support research, policy analysis, quality improvement activities, and demonstrations that attempt to foster a better understanding of how to improve the quality of life and contain the health care costs of the chronically ill.

We propose to modify existing Routine Use Number 1, to limit disclosures only to contractors of CMS. We also propose to add two new routine uses. Specifically, we propose adding a routine use to permit disclosures to healthcare providers who seek patient information for use in care coordination and quality improvement activities as described at 45 CFR 164.506(c)(4). This routine use will be added as Routine Use Number 4. We also propose adding a routine use to support public or private Qualified Entities (QEs) that use Medicare claims data to evaluate the performance of providers of services and suppliers on measures of quality, efficiency, effectiveness, and resource use. This routine use will be added as routine use number 6.

Finally, we are modifying the language in Routine Use Number 3 to include grantees of CMS administered grant programs and have made minor grammatical changes to Routine Use Number 10. These modifications will provide a better explanation as to the need for the routine use, and to clearly state CMS's intention when making disclosures of individually identifiable information contained in this system.

We have provided background information about the modified system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that the ''Routine Use'' section of the system of records notice be published for comment, CMS invites comments on all portions of this notice. See the Effective Dates section for information on the comment period.

DATES: *Effective Dates:* CMS filed a modified SOR report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security and Government Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on September 16, 2014. To ensure that all parties have adequate time in which to comment, the modified notice will become effective 30 days from the publication of the notice, or 40 days from the date it was submitted to OMB and the Congress, whichever is later. We may defer implementation of this modified system or one or more of the new routine uses listed below if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: CMS Privacy Officer, Privacy Policy Compliance Group, Office of E-Health Standards & Services, Office of Enterprise Management, CMS, 7500 Security Boulevard, Baltimore, MD 21244–1870, Mailstop: S2–24–25, Office: (410) 786–5357, E-Mail: *walter.stone@cms.hhs.gov.* Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9:00 a.m.–3:00 p.m., Eastern Time zone.

FOR FURTHER INFORMATION CONTACT: Michelle Seal, Health Insurance Specialist, Division of Research Data Development (DRDD), Data Development and Services Group, Office of Information Products and Data Analytics (OIPDA), OEM, CMS, Mail Stop B2–29–04, 7500 Security Boulevard, Baltimore, MD 21244–1850. Office Phone: 410–786–3679, Email address: *michelle.seal@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: The CCW will house data that will be easily linked, at the individual patient level, for all Medicare and Medicaid claims, enrollment and/or eligibility data, nursing home and home health assessments, and CMS beneficiary survey data. This data repository will transform and summarize this administrative health and health insurance information into data which will support research, policy analysis, quality improvement activities, demonstrations, and studies. These are aimed at improving the quality of care and reducing the cost of care for chronically ill Medicare beneficiaries and Medicaid recipients.

The repository is designed to encourage research and innovation that will reduce program spending, inform policy analyses, make current Medicare and Medicaid program data more readily available to researchers to study chronic illness in the Medicare and Medicaid populations, and improve process time for research data requests by refocusing on analytic, as opposed to operational considerations. The repository will also use utilize data analytic tools to organize and transform diagnostic information on a beneficiary's Medicare or Medicaid claims into information about their chronic medical conditions.

The Virtual Research Data Center (VRDC), an analytic tool, provides a secure mechanism for accessing and analyzing data within the environment instead of sending physical data files to researchers for analysis at their site. The workbench analytic tool provides users with the ability to create a custom sample of individuals and view associated claims within the VRDC environment. Analysis of data using these tools increases the privacy and security of the data.

The Privacy Act

The Privacy Act governs the collection, maintenance, use, and dissemination of certain information about individuals by agencies of the Federal Government.

A ''SOR'' is a group of any records under the control of a Federal agency from which information about individuals is retrieved by name or other personal identifier. The Privacy Act requires each agency to publish in the **Federal Register** a description of the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system to make agency recordkeeping practices transparent, to notify individuals regarding the uses to which their records are put, and to assist individuals to more easily find such files within the agency.

SYSTEM NUMBER: 09–70–0573

SYSTEM NAME:

''Chronic Condition Warehouse'' (CCW) HHS/CMS/OEM.

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850, and at various contractor sites.

CATEGORIES OF INDIVIDUALS IN THE SYSTEM:

CCW will collect and maintain individually identifiable and other data collected on Medicare beneficiaries, Medicaid recipients, and individually identifiable data on certain health care professionals.

CATEGORIES OF RECORDS IN THE SYSTEM:

The collected information will include, but is not limited to, individually identifiable Medicare and Medicaid claims, enrollment, and eligibility data, including names, addresses, health insurance claims numbers, social security numbers, race/

ethnicity data, gender, date of birth, Medicare Part A, B and C enrollment information, prescription drug coverage information, surgical procedures, diagnoses, provider name(s), unique provider identification numbers, National Provider Identification Numbers (NPI) as well as clinical assessment and outcome measures, and demographic, health/well-being, and background information relating to Medicare and Medicaid issues.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The CCW is authorized by Sections 723 of the Medicare Prescription Drug Improvement and Modernization Act of 2003 (MMA) (Pub. L. 108–173), which was enacted into law on December 8, 2003, and amended Title XVIII of the Social Security Act (the Act); Section 1902(a)(6) of the Act; Section 1142(c)(6) of the Act; and Title IV of the Balanced Budget Act (Pub. L. 105–33).

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to support research, policy analysis, quality improvement activities, and demonstrations that attempt to foster a better understanding of how to improve the quality of life and contain the health care costs of the chronically ill. This system will utilize data analytic tools to support accessing data by chronic conditions and process complex customized data requests related to chronic illnesses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

A. ENTITIES WHO MAY RECEIVE DISCLOSURES UNDER ROUTINE USE

The Privacy Act allows CMS to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use''. The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To CMS contractors who have been engaged by the agency to assist in the performance of a service related to this collection and who need to have access to the records in order to perform the activity.

2. To another Federal or state agency to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits;

b. Enable such agency to administer a Federal health benefits program, or, as necessary, to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; and/or

c. Assist Federal and/or state officials carrying out the Medicaid program.

3. To an individual or organization including grantees of a CMS administered grant program that require individually identifiable health information for use in research projects including any evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment reform related projects that produces generalizable knowledge.

4. To a healthcare provider who seeks patient information for use in care coordination and quality improvement activities as described at 45 CFR 164.506(c)(4);

5. To Quality Improvement Organizations (QIO) in connection with review of claims, or in connection with studies or other review activities conducted pursuant to Part B of Title XI of the Act, and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

6. To a public or private Qualified Entity (QE) that uses Medicare claims data to evaluate the performance of providers of services and suppliers on measures of quality, efficiency, effectiveness, and resource use; and who agrees to meet the requirements regarding the transparency of their methods and their use and protection of Medicare data.

7. To the Department of Justice (DOJ), court or adjudicatory body when: a. The agency or any component thereof, or b. Any employee of the agency in his or her official capacity, or c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or d. The United States Government, is a party to litigation or has an interest in such litigation, and, by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

8. To a CMS contractor (including, but not necessarily limited to, Medicare Administrative Contractors (MACs)) that assists in the administration of a CMS-administered health benefits program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

9. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

10. To Federal Departments, agencies and their contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, where the information disclosed is relevant to and necessary for that assistance.

11. To the U.S. Department of Homeland Security (DHS) cyber security personnel, if captured in an intrusion detection system used by HHS and DHS pursuant to the Einstein 2 program.

12. To public health authorities, and those entities acting under a delegation of authority from a public health authority, when requesting beneficiary-identifiable information to carry out statutorily-authorized public health activities pertaining to emergency preparedness and response.

B. ADDITIONAL CIRCUMSTANCES AFFECTING DISCLOSURE OF PII DATA:

To the extent that the individual claims records in this system contain Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, Subparts A and E), disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information'' (see 45 CFR 164–512 (a)(1)).

In addition, HHS policy will be to prohibit release even of data not directly identifiable with a particular individual, except pursuant to one of the routine uses or if required by law, if CMS determines there is a possibility that a particular individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals could, because of the small

size, use this information to deduce the identity of a particular individual).

RETENTION AND DISPOSAL:

CMS will retain information for a total period not to exceed 30 years. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from DOJ.

RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on electronic media.

RETRIEVABILITY:

The collected data are retrieved by an individual identifier; *e.g.,* beneficiary, recipient or provider name, HICN, or unique provider identification number (NPI).

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: The Privacy Act of 1974; and the Federal Information Department regulation 45 CFR 5b.7.

SYSTEM MANAGER AND ADDRESS:

Director, Data Development and Services Group, Office of Information Products and Data Analytics (OIPDA), OEM, Mail Stop B2–29–04, CMS, 7500 Security Boulevard, Baltimore, MD 21244–1849.

NOTIFICATION PROCEDURE:

An individual record subject who wishes to know if this system contains records about him or her should write to the system manager who will require the system name, HICN, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), and SSN (furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay).

RECORD ACCESS PROCEDURE:

An individual seeking access to records about him or her in this system should use the same procedures outlined in Notification Procedures above. The requestor should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

To contest a record, the subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. The individual should state the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7.)

RECORDS SOURCE CATEGORIES:

The data collected and maintained in this system are retrieved from the following databases: Medicare Drug Data Processing System, System No. 09–70–0553 (73 FR 30943 (May 29, 2008)); Medicare Beneficiary Database, System No. 09–70–0536 (71 FR 70396 (December 4, 2006)); Medicare Advantage Prescription Drug System, System No. 09–70–0588 (76 FR 47190 (August 4, 2011)); Medicaid Statistical Information System, System No. 09–70–0541 (71 FR 65527 (November 8, 2006)); Retiree Drug Subsidy Program, System No. 09–70–0550 (70 FR 41035 (July 15, 2005)); Common Working File, System No. 09–70–0526 (71 FR 64955 (November 6, 2006)); National Claims History, System No. 09–70–0558 (71 FR 67137 11/20/2006 (November 20, 2006)); Enrollment Database, System No. 09–70–0502 (73 FR 10249 2/26/2008 (February 26, 2008)); Carrier Medicare Claims Record, System No. 09–70–0501 (71 FR 64968 11/6/2006 (November 6, 2006)); Intermediary Medicare Claims Record, System No. 09–70–0503 (71 FR 648961 (November 6, 2006)); Unique Physician/Provider Identification Number, System No. 09–70–0525 (71 FR 66535 (November 15, 2006)); Medicare Supplier Identification File, System No. 09–70–0530 (71 FR 70404 (December 4, 2006)), A Current Beneficiary Survey, System No. 09–70–0519 (71 FR 60722 (October 16, 2006)); National Plan & Provider Enumerator System, System No. 09–70–0555, (75 FR 30411 (June 1, 2010)); Long Term Care MDS, System No. 09–70–0528 (72 FR 12801 (March 19, 2007)); HHA Outcome and Assessment Information Set, System No. 09–70–0522 (72 FR 63906 (November 13, 2007)); and Integrated Data Repository, System No. 09–70–0571 (71 FR 74915 (December 13, 2006)); Provider Enrollment Chain and Ownership System, System No. 09–70–0532 (71 FR 60536 (October 13, 2006); Medicare and Medicaid Electronic Health Record (EHR) Incentive Program National Level Repository, System No. 09–70–0587 (75 FR 73095 (November 29, 2010)); Performance Measurement and Reporting System, System No. 09–70–0584 (74 FR 17672 (April 16, 2009)); Encounter Data System, 09–70–0506 (79 FR 34539 (June 17, 2014)); and National Death Index, 09–20–0166 (49 FR 37692 (September 25, 1984)).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Celeste Dade-Vinson,

Health Insurance Specialist, Centers for Medicare & Medicaid Services.

[FR Doc. 2014–25937 Filed 10–30–14; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1072]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Application for Participation in the Food and Drug Administration Commissioner's Fellowship Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by December 1, 2014.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910—New and

title ''Application for Participation in the Food and Drug Administration Commissioner's Fellowship Program.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Application for Participation in the FDA Commissioner's Fellowship Program; (OMB Control Number 0910—New)

Sections 1104, 1302, 3301, 3304, 3320, 3361, 3393, and 3394 of Title 5 of the United States Code authorize Federal Agencies to rate applicants for Federal jobs. Collecting applications for the Commissioner's Fellowship Program will allow FDA's Office of the Commissioner to easily and efficiently elicit and review information from students and health care professionals who are interested in becoming involved in FDA-wide activities. The process will reduce the time and cost of submitting written documentation to the Agency and lessen the likelihood of applications being misrouted within the Agency mail system. It will assist the Agency in promoting and protecting the public health by encouraging outside persons to share their expertise with FDA.

In the **Federal Register** of August 4, 2014 (79 FR 45196), FDA published a 60-day notice requesting public comment on the proposed collection of information. Although one comment was received, it was not responsive to the four collection of information topics solicited and, therefore, will not be discussed in this document.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity/5 U.S.C. section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
1104, 1302, 3301, 3304, 3320, 3361, 3393, and 3394	600	1	600	1.33	798
Total	.....	.....	.....	.....	798

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA based these estimates on the number of inquiries that have been received concerning the program and the number of requests for application forms over the past 5 years.

Dated: October 27, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–25893 Filed 10–30–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0801]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Exports: Notification and Recordkeeping Requirements; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of October 14, 2014. The document announced that a proposed collection of information had been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995. In this document, we correct some errors that appeared in the notice.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In FR Doc. 2014–24293, appearing on page 61643 in the **Federal Register** of October 14, 2014 (79 FR 61643), we make the following correction: On page 61644, replace table 1 with the following table:

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	Total hours
1.101(d) (Non-Tobacco) (CBER)	5	193	965	15	14,475
1,101(d) (Non-Tobacco) (CDER)	5	180	900	15	13,500
1.101(d) (Non-Tobacco) (CDRH)	63	130	8,190	15	122,850
Total [2]	.....	.....	.....	.....	150,825

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[2] Due to a clerical error, the reporting burden for ''Exports: Notification and Recordkeeping Requirements'', which published on July 3, 2014 (79 FR 38036), was incorrect. Table 1 of this document contains the correct reporting burden for this collection.

Dated: October 27, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–25910 Filed 10–30–14; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1577]

Determination That TOPICORT (Desoximetasone) Cream and Other Drug Products Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to these drug products, and it will allow FDA to continue to approve ANDAs that refer to the products as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Amy Hopkins, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6223, Silver Spring, MD 20993–0002, 301–796–5418, *Amy.Hopkins@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, a drug is removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a) (21 CFR 314.161(a)), the Agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness: (1) Before an ANDA that refers to that listed drug may be approved, (2) whenever a listed drug is voluntarily withdrawn from sale and ANDAs that refer to the listed drug have been approved, and (3) when a person petitions for such a determination under 21 CFR 10.25(a) and 10.30. Section 314.161(d) provides that if FDA determines that a listed drug was withdrawn from sale for safety or effectiveness reasons, the Agency will initiate proceedings that could result in the withdrawal of approval of the ANDAs that refer to the listed drug.

FDA has become aware that the drug products listed in the table in this document are no longer being marketed. (As requested by the applicant, FDA withdrew approval of NDA 020611 for DOVONEX (calcipotriene) Solution and NDA 020239 for KYTRIL (granisetron hydrochloride) in the **Federal Register** of July 19, 2013 (78 FR 43210)).

Application No.	Drug	Applicant
NDA 017856	TOPICORT (desoximetasone) Cream; Topical 0.25%	Taro Pharmaceuticals North America Inc., 5 Skyline Dr., Hawthorne, NY 10532.
NDA 020239	KYTRIL (granisetron HCl) Injectable; Injection, Equivalent to (EQ) 0.1 milligram (mg) Base/milliliter (mL); EQ 1 mg Base/mL; EQ 3 mg Base/mL; EQ 4 mg Base/4 mL.	Hoffmann La Roche Inc., 340 Kingsland St., Nutley, NJ 07110.
NDA 020611	DOVONEX (calcipotriene) Solution; Topical, 0.005%	Leo Pharma Inc., 1 Sylvan Way, Parsippany, NJ 07054.
NDA 021275	LUMIGAN (bimatoprost) Solution/Drops; Ophthalmic, 0.03%.	Allergan Inc., 2525 Dupont Dr., Irvine, CA 92623.
NDA 021864	LYBREL (ethinyl estradiol; levonorgestrel) Tablet; Oral, 0.02 mg/0.09 mg.	Wyeth Pharmaceuticals Inc., P.O. Box 8299, Philadelphia, PA 19101.
ANDA 075222	Ketorolac Tromethamine Injectable; Injection, 15 mg/mL; 30 mg/mL.	Bedford Laboratories Inc., 300 Northfield Rd., Bedford, OH 44146.
ANDA 075228	Ketorolac Tromethamine Injectable; Injection, 30 mg/mL	Do.

FDA has reviewed its records and, under § 314.161, has determined that the drug products listed in this document were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the Agency will continue to list the drug products listed in this document in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness.

Approved ANDAs that refer to the NDAs and ANDAs listed in this document are unaffected by the discontinued marketing of the products subject to those NDAs and ANDAs. Additional ANDAs that refer to these products may also be approved by the Agency if they comply with relevant legal and regulatory requirements. If FDA determines that labeling for these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: October 27, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–25911 Filed 10–30–14; 8:45 am]

BILLING CODE 4164–01–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.

SUPPLEMENTARY INFORMATION: Technology descriptions follow.

Resolution Enhancement Technique for Light Sheet Microscopy Systems

Description of Technology: The invention pertains to a technique for enhancing the resolution of a light sheet microscopy technique by adding an additional enhanced depth-of-focus optical arrangement and high numerical aperture objective lens. The technique employs an arrangement of three objective lenses and a processor for combining captured images from the objectives. The resulting image composite retains the greater resolving power of the third high numerical aperture objective lens by imaging the light sheet with the third objective lens and enhanced depth-of-focus arrangement so that the overall resolution of the light sheet system is improved. The depth of field arrangement could be a simple oscillation of the third objective, or a ''layer cake'' or cubic phase mask component. Any loss in lateral resolution that results from the depth of field arrangement may be compensated for by deconvolution. In some embodiments, other optics, such as an axicon or annular aperture, can provide extended depth of field.

Potential Commercial Applications: Resolution enhancement in light microscopy

Competitive Advantages: Image composition using processing system

Development Stage:

- Early-stage
- Prototype

Inventors: Hari Shroff (NIBIB), Yicong Wu (NIBIB), Sara Abrahamsson (The Rockefeller University)

Intellectual Property: HHS Reference No. E–232–2014/0—U.S. Provisional Patent Application 62/054,484 filed September 24, 2014

Related Technology: HHS Reference No. E–078–2011/0—

- PCT Application No. PCT/US2012/27524 filed March 02, 2012
- U.S. Patent Application No. 14/003,380 filed September 5, 2013, which published as US 2014–0126046–A1 on May 08, 2014

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 light sheet microscopy image resolution enhancement. For collaboration opportunities, please contact Cecilia Pazman at 301–594–4273 or *pazmance@nhlbi.nih.gov.*

Resolution Enhancement for Line-Scanning Excitation Microscopy

Description of Technology: The invention describes a method for improving the spatial resolution of optical microscopes that use line-scanning excitation, such as line-scanning confocal microscopes, line-scanning STED microscopes, or line-scanning light-sheet microscopes. Common elements of the invention include: (a) An apparatus for exciting and scanning a line-like excitation focus through the sample; (b) an optical arrangement on the detection side of the microscope for manipulating the spacing and/or width of the resulting fluorescence emissions; (c) integration and optional post-processing of the manipulated fluorescence emissions after capture by an area detector such as a camera. The resolution increase may be performed with no or marginal decrease in temporal resolution relative to the conventional line-scanning microscopes upon which the technique is based.

Potential Commercial Applications: Fluorescence microscopy

Competitive Advantages:

- Improved resolution
- Enhanced acquisition speed relative to other forms of super-resolution microscopy

Development Stage: Prototype

Inventors: Hari Shroff, Andrew York, John Giannini, Abhishek Kumar (all of NIBIB)

Intellectual Property: HHS Reference No. E–225–2014—U.S. Provisional Patent Application 62/054,481 filed September 24, 2014

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 fluorescent microscopy. For collaboration opportunities, please contact Cecilia Pazman at 301–594–4273 or *pazmance@nhlbi.nih.gov.*

Chemotherapeutic Anti-Cancer Agents

Description of Technology: Available for licensing are new compounds derived from 4-benzyl-amino-benzyl alcohol. These compounds possess potent activity in multiple *in vitro* models of cancer cell growth inhibition and *in vivo* xenograft models of renal tumor regression. These compounds could potentially be developed into promising therapeutic agents for the treatment of various cancers.

Potential Commercial Applications: Chemotherapy of cancer

Competitive Advantages:

- Extreme potency for tumor regression in vivo.
- Compounds with similar profiles have been approved by the FDA as chemotherapeutic agents.

—Preliminary toxicology data available.

Development Stage:

- In vitro data available
- In vivo data available (animal)

Inventors: Joel Morris and Donn Wishka (NCI)

Intellectual Property: HHS Reference No. E–027–2014/0—U.S. Application No. 61/933,606 filed 20 Jan 2014

Licensing Contact: Patrick McCue, Ph.D.; 301–435–5560; *mccuepat@od.nih.gov*

Novel Codon-Optimized Gene Therapeutic for Methylmalonic Acidemia

Description of Technology: Methylmalonic Acidemia (MMA) is a metabolic disorder characterized by increased acidity in the blood and tissues due to toxic accumulation of

protein and fat by-products resulting in seizures, strokes, and chronic kidney failure. A significant portion of MMA cases stem from a deficiency in a key mitochondrial enzyme, methylmalonyl-CoA mutase (*MUT*), required to break down amino acids and lipids. Currently, there are no treatments for MMA and the disease is managed primarily with dietary restriction of amino acid precursors and liver-kidney transplantation in severe cases.

The present invention describes a synthetic codon-optimized MUT gene (co-MUT) that improves expression of human methylmalonyl-CoA mutase. A series of novel gene therapy vectors containing co-MUT rescued MMA mice from lethality and lowered levels of methylmalonic acid in the blood. Results of pre-clinical efficacy studies demonstrate a promising therapy for MMA and other renal-associated disorders.

Potential Commercial Applications:

- The co-MUT transgene could be used to treat MMA patients.
- In addition, it could be used to produce MUT in vitro for MMA enzyme replacement therapy.

Competitive Advantages: co-MUT transgene could be used through non-viral and viral gene delivery.

Development Stage:

- In vitro data available
- In vivo data available (animal)

Inventors: Charles P. Venditti and Randy J. Chandler (NHGRI)

Intellectual Property: HHS Reference No. E–243–2012/0—

- U.S. Provisional Application No. 61/792,081 filed 15 March 2013
- PCT Application No. PCT/US2014/028045 filed 14 March 2014

Licensing Contact: Vince Contreras, Ph.D.; 301–435–4711; *vince.contreras@nih.gov*

Collaborative Research Opportunity: The Organic Acid Research Section at the National Human Genome Research Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize codon-optimized MUT constructs. For collaboration opportunities, please contact Claire T. Driscoll at *cdriscoll@mail.nih.gov.*

Dated: October 28, 2014.

Richard U. Rodriguez,

Acting Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2014–25874 Filed 10–30–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 Environmental Health Sciences Special Emphasis Panel; Review of NIEHS R13 Conference Grant Applications.

Date: November 24, 2014.

Time: 12:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, Conference Room 3118, 530 Davis Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Janice B. Allen, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, 919/541–7556.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: October 24, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–25873 Filed 10–30–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2014–0053]

Privacy Act of 1974; Department of Homeland Security/United States Coast Guard—010 Physical Disability Evaluation System Files System of Records

AGENCY: Privacy Office, Department of Homeland Security.

ACTION: Notice of Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue a current Department of Homeland Security system of records titled, ''Department of Homeland Security/United States Coast Guard Physical Disability Evaluation System Files System of Records.'' This system of records allows the Department of Homeland Security/United States Coast Guard to collect and preserve the records regarding physical disability evaluation proceedings. As a result of the biennial review of this system, the system manager and address category has been updated. This updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before December 1, 2014. This updated system will be effective December 1, 2014.

ADDRESSES: You may submit comments, identified by docket number DHS–2014–0053 by one of the following methods:

- Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Fax: 202–343–4010.
- Mail: Karen L. Neuman, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, please visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Marilyn Scott-Perez (202–475–3515), Privacy Officer, Commandant (CG–61), United States Coast Guard, Mail Stop

7710, Washington, DC 20593. For privacy questions, please contact: Karen L. Neuman, (202) 343–1717, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) United States Coast Guard proposes to update and reissue a current DHS system of records titled, DHS/United States Coast Guard–010 Physical Disability Evaluation System Files System of Records.'' The DHS/USCG–010 Physical Disability Evaluation System Files System of Records will allow the Department of Homeland Security/United States Coast Guard to collect and preserve the records regarding physical disability evaluation proceedings. As a result of a biennial review of the system, the system manager and address category has been updated to reflect the new mail stop.

Consistent with DHS's information-sharing mission, information stored in the DHS/USCG–010 Physical Disability Evaluation System Files System of Records may be shared with other DHS components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, information may be shared with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice. This updated system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/USCG–010 Physical Disability Evaluation System Files System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records
Department of Homeland Security (DHS)/USCG–010

SYSTEM NAME:

DHS/USCG–010 Physical Disability Evaluation System Files System of Records

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

Records are maintained at the United States Coast Guard Headquarters in Washington, DC, and in field offices. Case Matter Management Tracking System (CMMT) is the information technology (IT) system in which records associated with this function are maintained.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All USCG active duty and reserve personnel who are referred for potential separation or retirement for physical disability.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Name;
- Social Security number (SSN) and/or Employee ID (EmpID);
- Informal Physical Evaluation Board files;
- Formal Physical Evaluation Board files;
- International Classification of Diseases code (ICD);
- Physical Review Council files;
- Physical Disability Appeal Board files; and
- Physical Disability Board of Review files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Departmental Regulations 5 U.S.C. 301; 14 U.S.C. 632; the Federal Records Act, 44 U.S.C. 3101; 10 U.S.C. Chapter 61.

PURPOSE(S):

The purpose of this system is to document physical disability evaluation proceedings and ensure equitable application of the provisions of Title 10, United States Code, Chapter 61, which relates to the separation or retirement of military personnel by reason of physical disability.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Note: For records of identity, diagnosis, prognosis, or treatment of any client/patient maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, irrespective of whether or when he/she ceases to be a client/patient, shall except as provided therein, be confidential and be disclosed only for the purposes and under circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974 to the extent that disclosure is more limited. The routine uses set forth below do not apply to this information. However, access to the record by the individual to whom the record pertains is governed by the Privacy Act. These alcohol and drug abuse patient records may be disclosed:

A. To medical personnel to the extent necessary to meet a bona fide medical emergency;

B. To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation provided that employees are individually identified;

C. To the employee's medical review official;

D. To the administrator of any Employee Assistance Program in which the employee is receiving counseling or treatment or is otherwise participating;

E. To any supervisory or management official within the employee's agency having authority to take adverse personnel action against such employee; or

F. Pursuant to the order of a court of competent jurisdiction when required by the United States Government to defend against any challenge against any adverse personnel action. See 42 U.S.C. 290dd, 290ee, and Public Law 100–71, Section 503(e).

Note: For all other records besides those noted above, this system of records contains individually identifiable health information. The Health Insurance Portability and Accountability Act of 1996, applies to most of such health information. Department of Defense 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice. Therefore, routine uses outlined below may not apply to such protected health information.

In addition to those disclosures generally permitted under 5 U.S.C.

552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorney, or other federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee or former employee of DHS in his/her official capacity;

3. Any employee or former employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise, there is a risk of identity theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To the Department of Veterans Affairs for assistance in determining the eligibility of individuals for benefits administered by that agency, and available to the U.S. Public Health Service or the Department of Defense medical personnel in connection with the performance of their official duties.

I. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

USCG stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, digital media.

RETRIEVABILITY:

USCG retrieves records by name, social security number, employee identification number, command, date, and the diagnosis or International Classification of Diseases (ICD) code.

SAFEGUARDS:

USCG safeguards records in this system in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. DHS imposes strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

USCG transfers records to the National Personnel Records Center, Military Personnel Records NPRC (MPRC) three years after last activity. USCG destroys records 50 years from the date of the latest document in the record. (AUTH: NC1–26–82–5, Item 2a2).

SYSTEM MANAGER AND ADDRESS:

Commander (CG–PSC), United States Coast Guard, 4200 Wilson Boulevard, Mail Stop 7200, Arlington, VA 20598–7200.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Commandant (CG–611), United States Coast Guard, Mail Stop 7710, Washington, DC 20593. If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act (FOIA) Officer, Department of Homeland Security, 245 Murray Drive SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer,

http://www.dhs.gov/foia or 1–866–431–0486. In addition, you should:

- Explain why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without the above information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records are obtained from information in records developed through proceedings of administrative bodies listed in ''Categories of records'' above.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: October 17, 2014.

Karen L. Neuman,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2014–25909 Filed 10–30–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2014–0056]

Privacy Act of 1974; Department of Homeland Security/United States Coast Guard—029 Notice of Arrival and Departure System of Records

AGENCY: Department of Homeland Security, Privacy Office.

ACTION: Notice of Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue a current Department of Homeland Security (DHS) system of records titled, ''Department of Homeland Security/United States Coast Guard—029 Notice of Arrival and Departure System of Records.'' This system of records allows the Department of Homeland Security/United States Coast Guard (USCG) to facilitate the effective and efficient entry and departure of vessels into and from the United States, and assist with assigning priorities for conducting maritime safety and security regulations. As a result of a biennial review of this system, the Department of Homeland Security/United States Coast Guard is updating this system of records notice to update the system manager and address category. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice. This updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before December 1, 2014. This updated system will be effective December 1, 2014.

ADDRESSES: You may submit comments, identified by docket number DHS–2014–0056 by one of the following methods:

- Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Fax: 202–343–4010.
- Mail: Karen L. Neuman, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, please visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Marilyn Scott-Perez, (202) 475–3515, Privacy Officer, Commandant (CG–61), United States Coast Guard, Mail Stop 7710, Washington, DC 20593. For privacy questions, please contact: Karen L. Neuman, (202) 343–1717, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) United States Coast Guard (USCG) proposes to update and reissue a current DHS system of records titled, ''DHS/USCG—029 Notice of Arrival and Departure System of Records.'' The collection and maintenance of this information will assist DHS/USCG in meeting its statutory obligation to assign priorities while conducting maritime safety and security missions in accordance with international and U.S. regulations. As a result of a biennial review of the system, the system manager and address category has been updated to reflect the new mail stop.

Consistent with DHS's information sharing mission, information stored in the DHS/USCG—029 Notice of Arrival and Departure (NOAD) may be shared with other DHS components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS/USCG may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

This updated system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/USCG–029 Notice of Arrival and Departure System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records
Department of Homeland Security (DHS)/ USCG–029

SYSTEM NAME:

DHS/USCG–029 Notice of Arrival and Departure System of Records

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

Records are maintained at the United States Coast Guard (USCG) Operations Systems Center, Kearneysville, West Virginia (WV), and other field locations. Ship Arrival Notice is the information technology (IT) system in which records associated with this function are maintained.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this notice consist of crew members who arrive and depart the U.S. by sea and individuals associated with a vessel and whose information is submitted as part of a notice of arrival or notice of departure, including but not limited to vessel owners, operators, charterers, reporting parties, 24-hour contacts, company security officers, and persons in addition to crew who arrive and depart the U.S. by sea.

CATEGORIES OF RECORDS IN THE SYSTEM:

• Records on vessels includes: Name of vessel; Name of registered owner; country of registry; call sign; International Maritime Organization (IMO) number or, if a vessel does not have an IMO number the official number; name of the operator; name of charterer; and name of classification society.

• Records on arrival information pertaining to the vessel includes: Names of last five foreign ports or places visited by the vessel; dates of arrival and departure for last five foreign ports or places visited; for each port or place of the U.S. to be visited, the name of the receiving facility; for the port or place of the U.S., the estimated date and time of arrival; for the port or place in the U.S., the estimated date and time of departure; the location (port or place and country) or position (latitude and longitude or waterway and mile marker) of the vessel at the time of reporting; and the name and telephone number of a 24-hour point of contact (POC).

• Records on departure information as it pertains to the voyage includes: The name of departing port or waterways of the U.S.; the estimated date and time of departure; next port or place of call (including foreign); the estimated date and time of arrival; and the name and telephone number of a 24-hour POC.

• Records on crewmembers include: Full name; date of birth; nationality; identification type (for example, passport, U.S. Alien Registration Card, U.S. Merchant Mariner Document, foreign mariner document, government issued picture Identification (ID) (Canada), or government-issued picture ID (U.S.), number, issuing country, issue date, expiration date); position or duties on the vessel; where the crewmember embarked (list port or place and country); and where the crewmember will disembark.

• Records for each individual onboard in addition to crew include: Full name; date of birth; nationality; identification type (for example: Passport, U.S. alien registration card, government-issued picture ID (Canada), government-issued picture ID (U.S.), number, issuing country, issue date, expiration date); U.S. address information; and from where the person embarked (list port or place and country).

• Records related to cargo onboard the vessel include: A general description of cargo other than Certain Dangerous Cargo (CDC) onboard the vessel (e.g., grain, container, oil); name of each CDC carried, including United Nations (UN) number, if applicable; and amount of each CDC carried.

• Records regarding the operational condition of equipment required by 33 Code of Federal Regulations (CFR) part 164; the date of issuance for the company's document of compliance certificate; the date of issuance of the vessel's safety management certificate; and the name of the flag administration, or recognized organization(s) representing the vessel flag administration that issued those certificates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Departmental Regulations, 5 U.S.C. 301; 14 U.S.C. 632; 33 U.S.C. 1223; 46 U.S.C. 3717; 46 U.S.C. 12501; Federal Records Act of 1950, Public Law 90–620; the Maritime Transportation Act of 2002, Public Law 107–295; the Homeland Security Act of 2002, Public Law 107–296; 33 CFR part 160; and 36 CFR chapter XII.

PURPOSE(S):

The purpose of this system is to maintain NOAD information to screen individuals and cargo associated with vessels entering or departing U.S. waterways for maritime safety, maritime security, maritime law enforcement, marine environmental protection, and other related purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee or former employee of DHS in his/her official capacity;

3. Any employee or former employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or

4. The U.S. or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise, there is a risk of identity theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To federal and foreign government intelligence or counterterrorism agencies or components if USCG becomes aware of an indication of a threat or potential threat to national or international security, or if such use is to assist in anti-terrorism efforts and disclosure is appropriate to the proper performance of the official duties of the person making the disclosure.

I. To an organization or individual in either the public or private sector, foreign or domestic, if there is a reason to believe that the recipient is or could become the target of a particular terrorist activity or conspiracy, to the extent the information is relevant to the protection of life, property, or other vital interests of a data subject and disclosure is proper and consistent with the official duties of the person making the disclosure;

J. To appropriate federal, state, local, tribal, territorial, or foreign governmental agencies or multilateral governmental organizations for the purpose of protecting the vital interests of a data subject or other persons, appropriate notice will be provided of any identified health threat or risk to assist such agencies or organizations in preventing exposure to or transmission of a communicable or quarantined disease or for combating other significant public health threats;

K. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, settlement negotiations, response to a subpoena, or in connection with criminal law proceedings;

L. To third parties during the course of a law enforcement investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate in the proper performance of the official duties of the officer making the disclosure;

M. To an appropriate federal, state, local, tribal, territorial, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit, or if the information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit and when disclosure is appropriate to the proper performance of the official duties of the person making the request;

N. To appropriate federal, state, local, tribal, territorial, or foreign governmental agencies or multilateral governmental organizations if USCG is aware of a need to utilize relevant data for purposes of testing new technology and systems designed to enhance border security or identify other violations of law.

O. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of DHS, or when disclosure is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

USCG stores NOAD information electronically in the Ship Arrival Notice System (SANS) located at USCG Operations Systems Center in Kearneysville, WV. USCG uses an alternative storage facility for the SANS historical logs and system backups. Derivative NOAD system data may be stored on USCG Standard Workstation III computers or USCG unit servers located at USCG Headquarters, headquarters units, area offices, sector offices, sector sub-unit offices, and other locations where USCG authorized personnel may be posted to facilitate DHS' mission.

RETRIEVABILITY:

USCG retrieves records from the SANS by vessel and then extracted by name, passport number, or other unique personal identifier. NOAD information maintained in the SANS is not directly retrievable by name or other unique personal identifier.

SAFEGUARDS:

USCG safeguards NOAD data in the SANS in accordance with applicable laws, rules, and policies. All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include role-based access provisions, restricting access to authorized personnel who have a need-to-know, using locks, and password protection identification features. USCG file areas are locked after normal duty hours and the facilities are protected from the outside by security personnel. The system manager, in addition, has the capability to maintain system back-ups for the purpose of supporting continuity of operations and the discrete need to isolate and copy specific data access transactions for the purpose of conducting security incident investigations. All communication links with the USCG datacenter are encrypted. The databases are Certified and Accredited in accordance with the requirements of the Federal Information Security Management Act (FISMA).

RETENTION AND DISPOSAL:

In accordance with NARA Disposition Authority number N1–026–05–11, NOAD information on vessels and individuals maintained in the SANS is destroyed or deleted when no longer needed for reference, or after ten years, whichever is later. Outputs, which include ad-hoc reports generated for local and immediate use to provide a variety of interested parties, for example, Captain of the Port and marine safety offices, sea marshals, Customs and Border Patrol, Immigration and Customs Enforcement with the necessary information to set up security zones, scheduling boarding and inspections activities, actions for non-compliance with regulations, and other activities in support of USCG's mission

to provide for safety and security of U.S. ports, are deleted after five years if they do not constitute a permanent record according to NARA.

SYSTEM MANAGER AND ADDRESS:

Commandant (CG–26), United States Coast Guard, Mail Stop 7301, Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Chief Privacy Officer and USCG's Freedom of Information Act (FOIA) Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''Contacts.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief FOIA Officer, Department of Homeland Security, Washington, DC 20528–0655.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. § 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief FOIA Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, you should:

- Explain why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records;

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without the above information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

USCG obtains NOAD records from vessel carriers and operators regarding passengers, crewmembers, and cargo that arrive in, depart from, or transit through the U.S. on a vessel carrier covered by notice of arrival and departure regulations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

When this system receives a record from another system exempted in that source system under 5 U.S.C. 552a(j)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated.

Dated: October 23, 2014.

Karen L. Neuman,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2014–25905 Filed 10–30–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2014–0052]

Privacy Act of 1974; Department of Homeland Security/United States Coast Guard—008 United States Coast Guard Courts Martial Case Files System of Records

AGENCY: Department of Homeland Security, Privacy Office.

ACTION: Notice of Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue a current Department of Homeland Security (DHS) system of records titled, ''Department of Homeland Security/United States Coast Guard United States Coast Guard Courts Martial Case Files System of Records.'' This system of records allows the Department of Homeland Security/United States Coast Guard (USCG) to collect and maintain records regarding military justice administration and documentation of DHS/USCG court martial. As a result of the biennial review of this system, United States Coast Guard is updating this system of records notice to include: (1) A new routine use; (2) an updated routine use; (3) updated storage; and (4) updated system manager and address category. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice. This updated system will be included in the Department of Homeland Security's inventory of record systems. The Privacy Act exemptions for this system remain unchanged.

DATES: Submit comments on or before December 1, 2014. This updated system will be effective December 1, 2014.

ADDRESSES: You may submit comments, identified by docket number DHS–2014–0052 by one of the following methods:

- Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Fax: 202–343–4010.
- Mail: Karen L. Neuman, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, please visit *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Marilyn Scott-Perez (202) 475–3515, Privacy Officer, Commandant (CG–61), United States Coast Guard, Mail Stop 7710, Washington, DC 20593. For privacy questions, please contact: Karen L. Neuman, (202) 343–1717, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) United States Coast Guard (USCG) proposes to update and reissue a current DHS system of records titled, ''DHS/USCG–008 United States Coast Guard Courts Martial Case File System of Records.'' The DHS/USCG–008 United States Coast Guard Courts Martial Case Files System of Records will allow the Department of Homeland Security/United States Coast Guard to collect and maintain records regarding military justice administration and documentation of DHS/USCG

courts martial. As a result of a biennial review of the system, this notice includes the following updates: (1) A new routine use that permits DHS to share information with the news media and the public in certain situations; (2) routine use C has been updated to note that records will be provided to General Services Administration; (3) storage has been updated to remove CD–ROM as a storage method; and (4) system manager and address has been updated to reflect a new system manager and mail stop. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice.

Consistent with DHS's information-sharing mission, information stored in the DHS/USCG–008 United States Coast Guard Courts Martial Case Files System of Records may be shared with other DHS components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, information may be shared with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice. This updated system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which federal government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/USCG–008 United States Coast Guard Courts Martial Case Files System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records

Department of Homeland Security (DHS)/USCG–008

SYSTEM NAME:

DHS/USCG–008 United States Coast Guard Courts Martial Case Files

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

Records are maintained at the United States Coast Guard Headquarters in Washington, DC, and in field offices. Case Matter Management Tracking System (CMMT) is the information technology (IT) system in which records associated with this function are maintained.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include all USCG active duty, reserve, and retired active duty and retired reserve military personnel and other individuals who are tried by, or involved with, courts martial.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Individual's name;
- Social Security number;
- Employee identification number;
- Date of birth;
- Addresses;
- Email address;
- Telephone numbers;
- Job-related information including: Job title, rank, duty station, supervisor's name and telephone number; and
- Records of trial (contents are in accordance with Article 54 of the Uniform Code of Military Justice and Rule for Court Martial 1103, which includes charge sheet, exhibits, transcript of trial, sentencing report, arguments, and various other documents).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Departmental Regulations 5 U.S.C. 301; the Federal Records Act, 44 U.S.C. 3101; 14 U.S.C. 93(e), 632; 10 U.S.C. 815; 10 U.S.C. 865; Executive Order 11835; DHS Delegation 0170.1.

PURPOSE(S):

The purpose of this system is to document courts martial case files relating to all USCG active duty, reserve, and retired active duty and retired reserve military personnel and other individuals who are tried by, or involved with, courts martial.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Courts martial records reflect criminal proceedings ordinarily open to the public; therefore, they are normally releasable to the public pursuant to the Freedom of Information Act (FOIA). In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, other federal agencies conducting litigation, or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee or former employee of DHS in his/her official capacity;

3. Any employee or former employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or

4. The U.S. or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise, there is a risk of identity theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in

connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To an appropriate federal, state, local, tribal, foreign, or international agency, if the information is relevant and necessary to a requesting agency's decision concerning the hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit, or if the information is relevant and necessary to a DHS decision concerning the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit and when disclosure is appropriate to the proper performance of the official duties of the person making the request.

I. To provide statistical data concerning the number of proceedings held, units holding proceedings, offenses committed, punishments imposed, and background data of individuals concerned.

J. To the Veterans Administration (VA) to assist USCG in determining the individual's entitlement to benefits administered by the VA.

K. To the confinement facility, if confinement is adjudged, and the confinement facility is not a USCG facility.

L. To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense pursuant to USCG Military Justice Manual, Article 4.B.1.d and subject to any restrictions provided by the Victim and Witness Protection Act of 1982 (Pub. L. 97–291).

M. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

USCG stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, or digital media.

RETRIEVABILITY:

USCG retrieves records alphabetically by the name of the individual.

SAFEGUARDS:

USCG safeguards records in this system in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. DHS imposes strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

All General Courts Martial and Special Courts Martial records involving Bad Conduct Discharge are permanent. Transfer to Federal Records Center (FRC) 2 years after date of final action. Transfer to NARA 10 years after final action. (AUTH: NC1–26–76–2, Item 384a). Special Courts Martial other than those involving Bad Conduct Discharges are temporary. Transfer to FRC 2 years after date of final action. Destroy 10 years after date of final action. (AUTH: NC1–26–76–2, Item 384b). Summary Courts Martial convened after 5 May 1950 are Temporary. Transfer to FRC 2 years after date of final action. Destroy 10 years after date of final action. (AUTH: NC1–26–76–2, Item 384c(1)).

SYSTEM MANAGER AND ADDRESS:

Commandant (CG–0946), United States Coast Guard, Mail Stop 7213, Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Commandant (CG–611), United States Coast Guard, Mail Stop 7710, Washington, DC 20593. If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, you should:

- Explain why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without the above information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records are obtained from USCG investigating officers, military, and civilian personnel. Individual service records from proceedings conducted. Trial proceedings and subsequent statutory reviews—Court of Military Review, Court of Appeals for the Armed Services, and Chief Counsel of the USCG.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to exemption 5 U.S.C. 552a(j)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), and (e)(8); (f); and (g). Pursuant to 5 U.S.C. 552a(k)(1) and (k)(2), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a (c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f).

Dated: October 17, 2014.

Karen L. Neuman,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2014–25908 Filed 10–30–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2014–0055]

Privacy Act of 1974; Department of Homeland Security United States Coast Guard–021 Appointment of Trustee or Guardian for Mentally Incompetent Personnel Files System of Records

AGENCY: Privacy Office, Department of Homeland Security.

ACTION: Notice of Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue a current Department of Homeland Security system of records titled, ''Department of Homeland Security/United States Coast Guard–021 Appointment of Trustee or Guardian for Mentally Incompetent Personnel Files System of Records.'' This system of records allows the Department of Homeland Security/United States Coast Guard to collect and preserve the records regarding the appointment of a trustee or guardian for mentally incompetent United States Coast Guard personnel. As a result of a biennial review of this system, DHS/United States Coast Guard is updating this system of records to update the system manager and address category. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice. This updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before December 1, 2014. This updated system will be effective December 1, 2014.

ADDRESSES: You may submit comments, identified by docket number DHS–2014–0055 by one of the following methods:

- Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Fax: 202–343–4010.
- Mail: Karen L. Neuman, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, please visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Marilyn Scott-Perez (202–475–3515), Privacy Officer, Commandant (CG–61), United States Coast Guard, Mail Stop 7710, Washington, DC 20593. For privacy questions, please contact: Karen L. Neuman, (202) 343–1717, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS)/United States Coast Guard (USCG) proposes to update and reissue a current DHS system of records titled, ''DHS/USCG–021 Appointment of Trustee or Guardian for Mentally Incompetent Personnel Files System of Records.''

The collection and maintenance of this information will assist DHS/USCG in meeting its statutory obligation to maintain information on incompetent USCG military personnel, their dependents, and survivors for the purpose of determining eligibility for DHS/USCG benefits such as military retired pay or the Survivor Benefit Plan for dependents, and the closely-related Veterans Affairs benefits. As a result of a biennial review of the system, the system manager and address category have been updated to reflect the new mail stop.

Consistent with DHS's information sharing mission, information stored in the DHS/USCG–021 Appointment of Trustee or Guardian for Mentally Incompetent Personnel Files System of Records may be shared with other DHS components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS/USCG may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice. This updated system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which federal government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/USCG–021 Appointment of Trustee or Guardian for Mentally Incompetent Personnel Files System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records

Department of Homeland Security (DHS)/ USCG–021

SYSTEM NAME:

DHS/USCG–021 Appointment of Trustee or Guardian for Mentally Incompetent Personnel.

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

USCG maintains records at the United States Coast Guard Headquarters in Washington, DC and field offices. Composite Health Care System is the information technology (IT) system in which records associated with this function are maintained.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include Coast Guard military personnel (regular, reserve, active duty, and retired) and their dependents or survivors who are mentally incompetent and the guardian or trustee.

CATEGORIES OF RECORDS IN THE SYSTEM:

- Individual's name;
- Guardian trustee's name and contact information;
- Information relating to the mental incompetence of certain Coast Guard personnel, their dependents, or survivors; and
- Records used to assist USCG officials in appointing guardian trustees to mentally incompetent USCG personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Departmental Regulations, 5 U.S.C. 301; 10 U.S.C. 1448, 1449; 14 U.S.C. 632; 37 U.S.C. 601–604; 33 CFR 49.05; 49 CFR 1.45, 1.46.

PURPOSE(S):

The purpose of this system is to maintain information on mentally incompetent USCG military personnel, their dependents, and survivors to determine eligibility for DHS/USCG benefits such as military retired pay or the Survivor Benefit Plan for survivors, and the closely-related Veterans Affairs benefits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Note: This system of records contains individually identifiable health information. The Health Insurance Portability and Accountability Act of 1996, applies to most of such health information. Department of Defense 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice. Therefore, routine uses outlined below may not apply to such health information.

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee or former employee of DHS in his/her official capacity;

3. Any employee or former employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or

4. The U.S. or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise, there is a risk of identity theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To prospective or approved guardian trustees or appointees, including but not limited to relatives, lawyers, and physicians or other designated representatives.

I. To the Department of Veteran's Affairs upon request for the determination of eligibility for benefits administered by that agency.

J. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of DHS, or when disclosure is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

DHS/USCG stores records in this system electronically or on paper in

secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, and digital media.

RETRIEVABILITY:

DHS/USCG retrieves records alphabetically by name.

SAFEGUARDS:

DHS/USCG safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. USCG has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Records are retained for five years after action is complete, then destroyed. (AUTH: NC1–26–76–2, Item 577)

SYSTEM MANAGER AND ADDRESS:

Commandant (CG–12), United States Coast Guard, Mail Stop 7907, Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Chief Privacy Officer and USCG's FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''Contacts.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, you should:

- Explain why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records;

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without the above information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records are obtained from U.S. Coast Guard officials, legal representatives of individuals, and/or individuals concerned, medical personnel, and complainants.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: October 17, 2014.

Karen L. Neuman

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2014–25906 Filed 10–30–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2014–0051]

Privacy Act of 1974; Department of Homeland Security/United States Coast Guard—018 Exchange System and Morale Well-Being and Recreational Systems Files System of Records

AGENCY: Department of Homeland Security, Privacy Office.

ACTION: Notice of Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue a current Department of Homeland Security system of records titled, ''Department of Homeland Security/United States Coast Guard—018 Exchange System and Morale Well-Being and Recreational Systems Files System of Records.'' This system of records allows the Department of Homeland Security/United States Coast Guard to collect and maintain records on the Coast Guard Exchange System and Morale Well-Being and Recreation Program. As a result of a biennial review of this system, Department of Homeland Security/United States Coast Guard is updating this system of records notice to (1) include a new routine use, (2) update the system manager and address, and (3) clarify how the United States Coast Guard stores Exchange System and Morale Well-Being and Recreation system files. This notice also includes non-substantive changes to simplify the formatting and text of the previously published notice updated system. This updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before December 1, 2014. This updated system will be effective December 1, 2014.

ADDRESSES: You may submit comments, identified by docket number DHS–2014–0051 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 343–4010.
- *Mail:* Karen L. Neuman, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, please visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Marilyn Scott-Perez, (202) 475–3515, Privacy Officer, Commandant (CG–61), United States Coast Guard, Mail Stop 7710, Washington, DC 20593–0001. For privacy questions, please contact: Karen L. Neuman, (202) 343–1717, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS)/United States Coast Guard (USCG) proposes to update and reissue a current DHS system of records titled, ''DHS/USCG–018 Exchange System (CGES) and Morale Well-Being and Recreation (MWR) System Files System of Records.'' The collection and maintenance of this information assists DHS/USCG in meeting its legal obligation to administer the CGES and MWR Program, as recognized in 14 U.S.C. 152. As a result of a biennial review of the system, USCG is updating DHS/USCG–018 Exchange System and Morale Well-Being and Recreation System Files to: (1) Add a new routine use; (2) update the system manager and address; and (3) update how USCG stores CGES and MWR system files. DHS added routine use H to provide notice that DHS may share information with the news media and the public when there is a legitimate public interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of DHS, or when disclosure is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system.

Consistent with DHS's information sharing mission, information stored in the DHS/USCG–018 Exchange System and Morale Well-Being and Recreation System Files System of Records may be shared with other DHS components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, DHS/USCG may share information with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

This updated system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which federal government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act defines ''individual'' as a U.S. citizen or lawful permanent resident. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/USCG–018 Exchange System and Morale Well-Being and Recreation System Files System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records

Department of Homeland Security (DHS)/United States Coast Guard (USCG)–018.

SYSTEM NAME:

DHS/USCG–018 Exchange System and Morale Well-Being and Recreation System Files System of Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the United States Coast Guard Headquarters in Washington, DC and field offices. Records associated with this system are maintained in the Defense Enrollment Eligibility Reporting System and the Core Accounting Suites information technology (IT) systems.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include eligible patrons of CGES and MWR, including active duty members and their dependents; members of the reserves and their dependents; military cadets of Services academies and their families; commissioned officers of the Public Health Service and their dependents; commissioned officers of the National Oceanic and Atmospheric Administration on active duty; armed forces retirees from active duty and their dependents; armed forces retirees from the reserves with/without pay and their dependents; honorably discharged veterans with 100 percent service-connected disability and their dependents; Medal of Honor recipients and their dependents; former spouses who have not remarried, but were married to a military member for at least 20 years while the military member was on active duty in the armed forces and their dependents; surviving children of a military member under 21 years old or 23 years old if they are not adopted by new parents and if they are in full-time study; DHS and Department of Defense (DoD) civilian employees and their dependents; other U.S. federal employees and medical personnel under contract to the USCG or DoD, when residing on an installation; military personnel of foreign nations and their dependents when on orders from the U.S. Armed Forces; paid members of the American Red Cross, Young Men's Christian Association, United Services Organization, and other private organizations when assigned to and serving with the U.S. Armed Forces; DHS/DoD contract personnel; Reserve Officers Training Corps cadets, former prisoners of war (POW) and spouses of current POWs, or service members missing in action and their family members; non-appropriated and appropriated funded foreign nationals (this typically happens at DoD installations where foreign nationals are paid for by either appropriated funds or non-appropriated funds); and other civilian members as authorized.

CATEGORIES OF RECORDS IN THE SYSTEM:

- Individual name;
- Payroll and personnel records;
- Accounting records for MWR loans;
- Listing of bad checks;
- Job applications;
- Correspondence regarding use of CGES and MWR programs and facilities;
- Membership applications as applicable for the use of any facilities;
- Investigatory reports involving damage to facilities or abuse of privileges to use facilities; and
- Financial accounting documentation supporting sales, accounts payable, accounts receivable as examples for the CGES/MWR program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 5 U.S.C. 2105; 10 U.S.C. 1146, 1587; 14 U.S.C. 152, 632; the Federal Records Act, 44 U.S.C. 3101.

PURPOSE(S):

The purpose of this system is to administer programs that provide for the mission readiness and retention of Coast Guard personnel and other authorized users; and to document the approval and conduct of specific contests, shows, entertainment programs, sports activities/competitions, and other MWR-type activities and events sponsored or sanctioned by the Coast Guard. Information is used for registration; reservations; track participation; pass management; report attendance; record sales transactions; maintain billing for individuals; collect

payments; collect and report time and attendance of employees; process credit cards, personal checks, and debit cards; create and manage budgets; order and receive supplies and services; provide child care services reports; track inventory; and issue catered event contracts. Information will be used to market and promote similar MWR-type activities conducted by Service's MWR programs, to provide a means of paying, recording, accounting, reporting, and controlling expenditures and merchandise inventories associated with retail operations, rentals, and activities such as bingo games.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorneys, or other federal agency conducting litigation or proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation or proceedings and one of the following is a party to the litigation or proceedings, or has an interest in such litigation or proceedings:

1. DHS or any component thereof;

2. Any employee or former employee of DHS in his/her official capacity;

3. Any employee or former employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or

4. The U.S. or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise, there is a risk of identity theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with the Office of the General Counsel, when there exists a legitimate public interest in the disclosure of the information, when disclosure is necessary to preserve confidence in the integrity of DHS, or when disclosure is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent the Chief Privacy Officer determines that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

DHS/USCG stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, and digital media.

RETRIEVABILITY:

Records may be retrieved alphabetically by name.

SAFEGUARDS:

DHS/USCG safeguards records in this system according to applicable rules and policies, including all applicable DHS automated systems security and access policies. USCG has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Letters of authorization for Coast Guard MWR/CGES activities are destroyed 3 years after disestablishment of the activity. Records and supporting documents for administration of Coast Guard MWR/CGES activities including bank statements, check registers, cash books, cancelled checks, property and stock records, expenditure vouchers, purchase orders, vendor's invoices, payroll and personnel records, daily activity records, guest registration cards, food and beverage cost control sheets, petty cash vouchers, reports and related papers are destroyed 6 years and 3 months after the period covered by the account. Credit cards receipts are destroyed in accordance with retention requirements issued by the card processing agency and ranges from 6 months to 2 years. General Records Schedule 2, item 1–31.

SYSTEM MANAGER AND ADDRESS:

Commandant (CG–1), United States Coast Guard, Mail Stop 7907, Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Commandant (CG–611), United States Coast Guard, Mail Stop 7710, Washington, DC 20593–0001. If an individual believes more

than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, Department of Homeland Security, 245 Murray Drive SW., Building 410, Mail Stop 0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov/foia*, or by calling 1–866–431–0486. In addition, you should:

- Explain why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records;

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without the above information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Records are obtained from individual record subjects, previous employees, employment agencies, civilian and military investigative reports, and general correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: October 17, 2014.

Karen L. Neuman

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2014–25907 Filed 10–30–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2014–0054]

Privacy Act of 1974; Department of Homeland Security/United States Coast Guard–012 Request for Remission of Indebtedness System of Records

AGENCY: Privacy Office, Department of Homeland Security.

ACTION: Notice of Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue a current Department of Homeland Security system of records titled, ''Department of Homeland Security/United States Coast Guard Request for Remission of Indebtedness System of Records.'' This system of records allows the Department of Homeland Security/United States Coast Guard to collect and preserve the records regarding the remission of indebtedness. As a result of the biennial review of this system, the system manager and address category has been updated. Additionally, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice. This updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before December 1, 2014. This updated system will be effective December 1, 2014.

ADDRESSES: You may submit comments, identified by docket number DHS–2014–0054 by one of the following methods:

- Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Fax: 202–343–4010.
- Mail: Karen L. Neuman, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, please visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Marilyn Scott-Perez (202–475–3515), Privacy Officer, Commandant (CG–61), United States Coast Guard, Mail Stop 7710, Washington, DC 20593. For privacy questions, please contact: Karen L. Neuman, (202) 343–1717, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) United States Coast Guard proposes to update and reissue a current DHS system of records titled, ''DHS/United States Coast Guard-012 Request for Remission of Indebtedness System of Records.'' The collection and maintenance of this information will assist DHS/USCG in meeting its statutory obligation to address requests of remission of indebtedness for active duty enlisted USCG personnel. The DHS/USCG–012 Request for Remission of Indebtedness System of Records will allow the Department of Homeland Security/United States Coast Guard to collect and preserve the records regarding the remission of indebtedness. As a result of a biennial review of the system, the system manager and address category has been updated to reflect the new office symbol and mailstop.

Consistent with DHS's information-sharing mission, information stored in the DHS/USCG–012 Request for Remission of Indebtedness System of Records may be shared with other DHS components that have a need to know the information to carry out their national security, law enforcement, immigration, intelligence, or other homeland security functions. In addition, information may be shared with appropriate federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice. This updated system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which Federal Government

agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/USCG–012 Request for Remission of Indebtedness System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM OF RECORDS

DEPARTMENT OF HOMELAND SECURITY (DHS)/USCG–012

SYSTEM NAME:

DHS/USCG–012 Request for Remission of Indebtedness System of Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

USCG maintains records at the United States Coast Guard Headquarters in Washington, DC and field offices. Direct Access is the information technology (IT) system in which records associated with this function are maintained.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty enlisted USCG personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

- Individual's name;
- employee ID number (EMPLID);
- command name, and command address;
- Individual's Leave and Earning Statement (LES), including home address;
- Correspondence submitted to the USCG, such as leave and earning statements, letters or notices of indebtedness, financial worksheets, travel orders, or other documents related to the cause for indebtedness;
- Requests for endorsements;
- Correspondence submitted by the enlisted member, as appropriate;
- Research material on the individual's file;
- Paneling action;
- Commandant's decision.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Departmental Regulations, 5 U.S.C. 301; the Federal Records Act, 44 U.S.C. 3101; 14 U.S.C. 461, 632.

PURPOSE(S):

The purpose of this system is to aid USCG in determining whether an active duty enlisted member is eligible to have the indebtedness to the U.S. Government forgiven, or a portion of the indebtedness forgiven pursuant to 14 U.S.C. 461, based on the best interests of the individual and the Government.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ), including Offices of the U.S. Attorney, or other federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee or former employee of DHS in his/her official capacity;

3. Any employee or former employee of DHS in his/her individual capacity when DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration (NARA) or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS has determined that as a result of the suspected or confirmed compromise, there is a risk of identity theft or fraud, harm to economic or property interests, harm to an individual, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) that rely upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, when a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

USCG stores records in this system electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, digital media.

RETRIEVABILITY:

USCG retrieves records alphabetically by name.

SAFEGUARDS:

USCG safeguards records in this system in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. DHS imposes strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Records are retained for five years past the date of the final adjudication.

SYSTEM MANAGER AND ADDRESS:

Commandant (CG–12), United States Coast Guard, Mail Stop 7907, Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Commandant (CG–611), United States Coast Guard, Mail Stop 7710, Washington, DC 20593. If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer (FOIA), Department of Homeland Security, 245 Murray Drive SW., Building 410, STOP–0655, Washington, DC 20528.

When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR Part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov/foia* or 1–866–431–0486. In addition, you should:

- Explain why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without the above information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Individuals covered by this system of records and Coast Guard Officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: October 17, 2014.

Karen L. Neuman

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2014–25913 Filed 10–30–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0002]

Agency Information Collection Activities: General Declaration

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: General Declaration (CBP Form 7507). CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before December 30, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: General Declaration (Outward/Inward) Agriculture, Customs, Immigration, and Public Health.

OMB Number: 1651–0002.

Form Number: Form 7507.

Abstract: CBP Form 7507, *General Declaration (Outward/Inward) Agriculture, Customs, Immigration, and Public Health,* must be filed for all aircraft entering under the provisions of 19 CFR 122.41. This form is used to document clearance by the arriving aircraft at the required inspectional facilities and inspections by appropriate regulatory agency staffs. CBP Form 7507 collects information about the flight routing, the numbers of passengers embarking and disembarking, a declaration of health for the persons on board, details about disinfecting and sanitizing treatments during the flight, and a declaration attesting to the accuracy and completeness and truthfulness of all other documents that make up the manifest.

CBP Form 7507 is authorized by 19 U.S.C. 1431, 1433, and 1644a; 39 U.S.C. 602(b) and provided for by 19 CFR 122.43, 122.48, 122.54, 122.73, and 122.144. This form is accessible at: *http://www.cbp.gov/sites/default/files/documents/CBP%20Form%207507.pdf.*

Action: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to CBP Forms 7507.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 500.

Estimated Number of Total Annual Responses: 1,000,000.

Estimated Time per Response: 5 minutes.

Estimated Annual Burden Hours: 83,000.

Dated: October 27, 2014.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2014–25914 Filed 10–30–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0016]

Agency Information Collection Activities: Certificate of Origin

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Certificate of Origin (CBP Form 3229). CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

DATES: Written comments should be received on or before December 30, 2014 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

Title: Certificate of Origin.

OMB Number: 1651–0016.

Form Number: Form 3229.

Abstract: CBP Form 3229, Certificate of Origin, is used by shippers and importers to declare that goods being imported into the United States are produced or manufactured in a U.S. insular possession from materials grown, produced or manufactured in such possession. This form includes a list of the foreign materials included in the goods, and their description and value. CBP Form 3229 is used as documentation for goods entitled to enter the U.S. free of duty. This form is authorized by General Note 3(a)(iv) of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) and is provided for by 19 CFR Part 7.3. CBP Form 3229 is accessible at *http://forms.cbp.gov/pdf/CBP_Form_3229.pdf.*

Action: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to CBP Forms 3229.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 113.

Estimated Number of Annual Responses per Respondent: 20.

Estimated Number of Total Annual Responses: 2,260.

Estimated Time per Response: 22 minutes.

Estimated Annual Burden Hours: 814.

Dated: October 27, 2014.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2014–25915 Filed 10–30–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5759–N–14]

60-Day Notice of Proposed Information Collection: Indian Community Development Block Grant

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, PIH, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* December 30, 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: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Mussington.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Indian Community Development Block Grant Information Collection.

OMB Approval Number: 2577–0191.

Type of Request: Extension of currently approved collection.

Form Number: HUD–4123, HUD–4125.

Description of the need for the information and proposed use: Title I of the Housing and Community Development Act of 1974 authorizes Indian Community Development Block Grants (ICDBG) and requires that grants be awarded annually on a competitive basis. The purpose of the ICDBG program is to develop viable Indian and Alaska Native communities by creating decent housing, suitable living environments, and economic opportunities primarily for low- and moderate-income persons. Consistent with this objective, not less than 70 percent of the expenditures are to benefit low and moderate-income persons. Eligible applicants include Federally-recognized tribes, which includes Alaska Native communities, and tribally authorized tribal organizations. Eligible categories of funding include housing rehabilitation, land acquisition to support new housing, homeownership assistance, public facilities and improvements, economic development, and microenterprise programs. For a complete description of eligible activities, please refer to 24 CFR part 1003, subpart C.

The ICDBG program regulations are at 24 CFR part 1003. The ICDBG program requires eligible applicants to submit information to enable HUD to select the best projects for funding during annual competitions. Additionally, the information submitted is essential for HUD in monitoring grants to ensure that grantees are complying with applicable statutes and regulations and implementing activities as approved.

ICDBG applicants must submit a complete application package which includes an Application for Federal Assistance (SF–424), Applicant/Recipient Disclosure/Update Report (HUD–2880), Cost Summary (HUD–4123), and Implementation Schedule (HUD–4125). If the applicant has a waiver of the electronic submission requirement and is submitting a paper application, an Acknowledgement of Application Receipt (HUD–2993) must also be submitted. If the applicant is a tribal organization, a resolution from the tribe stating that the tribal organization is submitting an application on behalf of the tribe must also be included in the application package.

ICDBG recipients are required to submit a quarterly Federal Financial Report (SF–425) that describes the use of grant funds drawn from the recipient's line of credit. The reports are used to monitor cash transfers to the recipients and obtain expenditure data from the recipients. (24 CFR 1003.501(16)).

The regulations at 24 CFR part 85 require that grantees and sub-grantees ''take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible'' (24 CFR 85.36(e)). Consistent with these regulations, 24 CFR 1003.506(b) requires that ICDBG grantees report on these activities on an annual basis, with Contract and Subcontract Activity Report being due to HUD on October 10 of each year (HUD–2516).

The regulations at 24 CFR 1003.506 instruct recipients to submit to HUD an Annual Status and Evaluation Report (ASER) that describes the progress made in completing approved activities with a listing of work to be completed; a breakdown of funds expended; and when the project is completed, a program evaluation expressing the effectiveness of the project in meeting community development needs. The ASER is due by November 15 each year and at grant closeout.

The information collected will allow HUD to accurately audit the program.

Respondents: Federally recognized Native American Tribes, Alaska Native communities and corporations, and tribal organizations.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Grant Application (Includes SF–424, HUD–2880, HUD–2993, HUD–4123, HUD–4125)	240	1	240	30	7,200	$19.23	$138,461.54
Federal Financial Report (SF–425)	100	4	400	.5	200	19.23	3,846.15
Contract and Subcontract Activity Report (HUD–2516)	100	1	100	1	100	19.23	1,923.08
Annual Status and Evaluation Report (ASER)	100	1	100	4	400	19.23	7,692.31
Total			840		7,900		151,923.08

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: October 24, 2014.

Merrie Nichols-Dixon,

Deputy Director, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2014–25965 Filed 10–30–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5750–N–44]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 5B–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301)–443–6672 (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Agriculture:* Ms. Debra Kerr, Department of Agriculture, Reporters Building, 300 7th Street SW., Room 300, Washington, DC 20024, (202) 720–8873; *COE:* Ms. Brenda John-Turner, Army Corps of Engineers, Real Estate, HQUSACE/CEMP–CR, 441 G Street NW., Washington, DC 20314; (202) 761–5222; *Energy:* Mr. David Steinau, Department of Energy, Office of Property Management, 1000 Independence Ave. SW., Washington, DC 20585 (202) 287–1503; *GSA:* Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040 Washington, DC 20405, (202) 501–0084; *NASA:* Mr. Frank T. Bellinger, Facilities Engineering Division, National Aeronautics & Space Administration, Code JX, Washington, DC 20546, (202)–358–1124 (These are not toll-free numbers).

Dated: October 23, 2014 .

Brian P. Fitzmaurice

Director, Division of Community Assistance, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 10/31/2014

Suitable/Available Properties

Building

Alaska

FAA Housing
111 Henrichs Loop Road
Cordova AK 99754
Landholding Agency: GSA
Property Number: 54201440002
Status: Excess
GSA Number: 9–U–AK–0854
Directions: Disposal Agency; GSA; Land Holding Agency; Transportation

Comments: 25+ yrs. old; 2,688 sq. ft.; 3 months vacant; residential good condition; may be difficult to move; contact GSA for more information.

California

Mad River Single Wide Trailer
@Ruth Fire Station
741 State Hwy 36
Mad River CA 95552
Landholding Agency: Agriculture
Property Number: 15201440001
Status: Excess
Comments: off-site removal only; 35+ yrs. old; 768 sq. ft.; very poor conditions; located in a secure area; contact Agriculture for more information.

Oklahoma

SWT—Robert S. Kerr Lake
HC 61, Box 238
Sallisaw OK 74955–9445
Landholding Agency: COE
Property Number: 31201440001
Status: Unutilized
Comments: off-site removal only; no future agency need; 42+ yrs. old; 263.97 sq. ft.; toilet; deterioration & damage to structure; contact COE for more information.

SWT—Waurika Lake
Route 1, Box 68
Waurika OK 73573–9721
Landholding Agency: COE
Property Number: 31201440002
Status: Unutilized
Comments: off-site removal only; no future agency need; 34+ yrs. old; 370.98 sq. ft.; toilet; deterioration & damage to structure; contact COE for more information.

SWT—WD Mayo Lock & Dam 14
14213 L & D Road
Spiro OK 74959–9625
Landholding Agency: COE
Property Number: 31201440003
Status: Unutilized
Comments: off-site removal only; no future agency need; 39+ yrs. old; 295.02 sq. ft.; toilet; deterioration & damage to structure; contact COE for more information.

SWT—Keystone Lake
23115—West Wekiwa Road
Sand Springs OK 74063–9312
Landholding Agency: COE
Property Number: 31201440004
Status: Unutilized
Comments: off-site removal only; 27+ yrs. old; no future agency need; 327.96 sq. ft.; toilet; deterioration; extensive repairs required; contact COE for more information.

Claremore Federal Office Building
118 South Missouri Avenue
Claremore OK 74017
Landholding Agency: GSA
Property Number: 54201440001
Status: Surplus
GSA Number: 7–I–OK–0568–AB
Directions: Disposal Agency; GSA; Landholding Agency; Bureau of Indian Affairs.
Comments: 79+ yrs. old; 8,798 sq. ft.; vacant 114 months; office; brick; may be difficult to remove; ok condition; secure area; contact GSA for more information.

Texas

Whitney Lake
285 CR 3602
Clifton TX 76634
Landholding Agency: COE
Property Number: 31201440006
Status: Excess
Directions: WH–2758; WH–27971; WH–27984
Comments: off-site removal only; 62+ yrs. old; 257.04 sq. ft.; restroom; contact COE for more information.

Unsuitable Properties

Building

Alaska

Yakutat Upper Air Inflation Shelter
Yakutat Airport
Yakutat AK 99689
Landholding Agency: GSA
Property Number: 54201440003
Status: Excess
GSA Number: 9–C–AK–00856AB
Directions: Disposal Agency; GSA; Landholding Agency; Commerce.
Comments: property located within an Airport Runway protected zone.
Reasons: Secured Area

Florida

Instrumentation Facility
K7.1557
Kennedy Space Center FL 32899
Landholding Agency: NASA
Property Number: 71201440006
Status: Unutilized
Comments: public access denied & no alternative method to gain access w/out compromising Nat'l Sec.
Reasons: Secured Area

Headquarters Building
M6–0399/Headquarters Bldg. 1st Street SE
Kennedy Space Center FL 32899
Landholding Agency: NASA
Property Number: 71201440007
Status: Underutilized
Comments: public access denied & no alternative method to gain access w/out compromising Nat'l Sec.
Reasons: Secured Area

Parachute Refurbishment Facility
M7–0657 E Ave. SE
Kennedy Space Center FL 32899
Landholding Agency: NASA
Property Number: 71201440008
Status: Unutilized
Comments: public access denied & no alternative method to gain access w/out compromising Nat'l Sec.
Reasons: Secured Area

Solar Array Test Building
60540—Hangar Road
CCAFS FL 32925
Landholding Agency: NASA
Property Number: 71201440009
Status: Unutilized
Comments: public access denied & no alternative method to gain access w/out compromising Nat'l Sec.
Reasons: Secured Area

Hangar M Annex
14955 Hangar Rd.
CCAFS FL 32925
Landholding Agency: NASA
Property Number: 71201440010
Status: Unutilized
Comments: public access denied & no alternative method to gain access w/out compromising Nat'l Sec.
Reasons: Secured Area

Central Instrumentation Facility
M6–0342 1st Street SE
Kennedy Space Center FL 32899
Landholding Agency: NASA
Property Number: 71201440011
Status: Unutilized
Comments: public access denied & no alternative method to gain access w/out compromising Nat'l Sec.
Reasons: Secured Area

Generator Building
K7–1557A
Kennedy Space Center FL 32899
Landholding Agency: NASA
Property Number: 71201440013
Status: Unutilized
Comments: public access denied & no alternative method to gain access w/out compromising Nat'l Sec.
Reasons: Secured Area

Mississippi

Bldg. 1106 EPA Storage Facility
Stennis Space Center
Hancock County MS 39529
Landholding Agency: NASA
Property Number: 71201440012
Status: Unutilized
Comments: public access denied & no alternative method to gain access w/out compromising Nat'l Sec.
Reasons: Secured Area

Bldg. 1107 Dioxin Lab
Stennis Space Center
Hancock County MS 39529
Landholding Agency: NASA
Property Number: 71201440014
Status: Unutilized
Comments: public access denied & no alternative method to gain access w/out compromising Nat'l Sec.
Reasons: Secured Area

Tennessee

Y–12 National Security Complex
Bear Creek Rd. at Scarboro Road
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41201440004
Status: Unutilized
Directions: 9416–12; 9416–14; 9416–41; 9424–01; 9424–02; 9610–01; 9616–10; 9770–06; 9616–09; 9720–17; 9720–22; 9720–24; 9111; 9112; 9204–04; 9206; 9401–03; 9401–04; 9404–16; 9404–17; 9404–18; 9404–20; 9959–01; 9977; 9949–17; 9826; 9811–04; 9811–03; 9803; 9770–11; 9770–10; 9811–06; 9811–07; 9949–37; 9976; 9990–03
Comments: highly classified secured area; public access denied & no alternative method to gain access w/out compromising nat'l security.
Reasons: Secured Area

[FR Doc. 2014–25793 Filed 10–30–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5800–FA–12]

Notice of Funding Availability for HUD's Fiscal Year 2014 Community Compass Technical Assistance and Capacity Building

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for the HUD Community Compass Technical Assistance and Capacity Building program for Fiscal Year 2014. This announcement contains the names of the awardees and amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Julie Hopkins, Director, Technical Assistance Division, Office of Community Planning and Development, 451 Seventh Street SW., Room 7218, Washington, DC 20410–7000; telephone (202) 402–4496 (this is not a toll-free number). Persons with speech or hearing impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service during working hours at 800–877–8339. For general information on this and other HUD programs, call Community Connections at 1–800–998–9999 or visit the HUD Web site at *http://www.hud.gov.*

SUPPLEMENTARY INFORMATION: The goal of Community Compass is to empower communities by providing effective technical assistance and capacity building so that successful program implementation is sustained over the long term.

Recognizing that HUD's customers often interact with a variety of HUD programs as they deliver housing or community development services, Community Compass brings together technical assistance investments from across HUD program offices, including but not limited to the Office of Community Planning and Development, the Office of Housing, and the Office of Public and Indian Housing.

The competition was announced in the NOFA published on June 2, 2014 (FR–5800–N–12) and closed on July 23, 2014. The NOFA allowed for approximately $51 million for HUD Community Compass Technical Assistance and Capacity Building awards. Applications were rated and selected for funding on the basis of selection criteria contained in the Notice. For the Fiscal Year 2014 competition, awards totaling $51,535,629 were awarded to 19 different technical assistance providers nationwide.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the awardees and the amounts of the awards in Appendix A to this document.

Dated: October 24, 2014.

Clifford Taffet,

General Deputy Assistant Secretary for Community Planning and Development.

Appendix A

FISCAL YEAR 2014

[HUD Community Compass Technical Assistance and Capacity Awards]

Recipient	City	State	Amount
Abt Associates, Inc	Cambridge	MA	$6,350,000
Advocates for Human Potential, Inc	Sudbury	MA	500,000
American Institutes for Research	Washington	DC	4,950,000
Association of Alaska Housing Authorities	Anchorage	AK	948,000
BCT Partners, LLC	Newark	NJ	1,000,000
Cloudburst Consulting Group, Inc	Landover	MD	3,225,000
Corporation for Supportive Housing	New York	NY	1,200,000
CVR Associates, Inc	Tampa	FL	2,000,000
Econometrica, Inc	Bethesda	MD	3,250,000
Enterprise Community Partners, Inc	Columbia	MD	1,575,000
FirstPic, Inc	Gambrills	MD	5,280,521
ICF Incorporated, LLC	Fairfax	VA	12,657,108
Inland Mediation Board	Ontario	CA	1,500,000
Mosaic Urban Partners LLC	Washington	DC	500,000
National American Indian Housing Council	Washington	DC	2,600,000
National Council for Community Development, Inc	New York	NY	500,000
TDA Consulting, Inc	Laurinburg	NC	800,000
Technical Assistance Collaborative, Inc	Boston	MA	1,700,000
The Partnership Center, Ltd	Cincinnati	OH	1,000,000
TOTAL			51,535,629

[FR Doc. 2014–25972 Filed 10–30–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

[FWS–R4–FHC–2014–N215; FVHC98130406900–XXX–FF04G01000]

Deepwater Horizon Oil Spill; Record of Decision for the Final Programmatic and Phase III Early Restoration Plan and Early Restoration Programmatic Environmental Impact Statement

AGENCY: Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the Oil Pollution Act of 1990 (OPA) and the National Environmental Policy Act (NEPA), notice is hereby given that the Federal and State natural resource trustee agencies (Trustees) have issued a Record of Decision (ROD) for the Final Programmatic and Phase III Early Restoration Plan and Early Restoration Programmatic Environmental Impact Statement (Final Phase III ERP/PEIS). The ROD documents decisions by the Trustees under OPA: (1) Selection of the Preferred Alternative for the Programmatic Early Restoration Plan; and (2) selection of 44 projects for the Final Phase III Early Restoration Plan, subject to completing remaining permitting and consultation requirements, as specifically identified in Section 9 of the ROD.

ADDRESSES: *Obtaining Documents:* You may download the ROD at *http://www.gulfspillrestoration.noaa.gov* or *http://www.doi.gov/deepwaterhorizon.* You may also view the ROD at any of the public repositories listed at *http://www.gulfspillrestoration.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Nanciann Regalado at 678–296–6805 (phone) or *nanciann_regalado@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Background

On April 20, 2011, BP Exploration & Production Inc. and the Trustees agreed to the Framework for Early Restoration Addressing Injuries Resulting from the *Deepwater Horizon* Oil Spill (Framework Agreement), to provide up to $1 billion toward early restoration projects in the Gulf of Mexico to address injuries to natural resources caused by the *Deepwater Horizon* oil spill. The Framework Agreement represents a preliminary step toward the restoration of injured natural resources. The Framework Agreement is intended to expedite the start of restoration in the Gulf in advance of the completion of the injury assessment process. The Framework Agreement provides a mechanism through which the Trustees and BP can work together ''to commence implementation of early restoration projects that will provide meaningful benefits to accelerate restoration in the Gulf as quickly as practicable,'' prior to the resolution of the Trustees' natural resource damages claim.

The Trustees are:

- U.S. Department of the Interior (DOI), as represented by the National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management;
- National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce;
- U.S. Department of Agriculture (USDA);
- U.S. Department of Defense (DOD); [1]
- U.S. Environmental Protection Agency (USEPA);
- State of Louisiana Coastal Protection and Restoration Authority, Oil Spill Coordinator's Office, Department of Environmental Quality, Department of Wildlife and Fisheries, and Department of Natural Resources;
- State of Mississippi Department of Environmental Quality;
- State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;
- State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; and
- For the State of Texas, Texas Parks and Wildlife Department, Texas General Land Office, and Texas Commission on Environmental Quality.

The Trustees considered hundreds of projects leading to the identification of a potential 28 future early restoration projects announced in the May 6, 2013 **Federal Register** notice (78 FR 26319). On June 4, 2013 (78 FR 33431), the Trustees announced their intent to prepare a Programmatic Environmental Impact Statement (PEIS) under OPA and NEPA to evaluate the environmental consequences of early restoration project types, as well as to propose a Phase III Early Restoration Plan to address injuries from the *Deepwater Horizon* oil spill that would include the 28 early restoration projects announced in the May 6, 2013, **Federal Register** notice and potentially additional early restoration projects. In accordance with NEPA, the Trustees conducted scoping to identify the concerns of the affected public, Federal agencies, States, and Indian tribes; to involve the public in the decision making process; to facilitate efficient early restoration planning and environmental review; to define the issues and alternatives that would be examined in detail; and to save time by ensuring that draft documents adequately address relevant issues. A scoping process reduces paperwork and delay by ensuring that important issues are considered early in the decision making process. To gather public input, the Trustees hosted six public meetings and accepted written comment electronically and via U.S. mail during the scoping period.

A notice of availability of the Draft Programmatic and Phase III Early Restoration Plan and Draft Early Restoration Programmatic Environmental Impact Statement (Draft Phase III ERP/PEIS) was published in the **Federal Register** on December 6, 2013 (78 FR 73555). The Draft Phase III ERP/PEIS considered programmatic alternatives for early restoration and proposed alternatives for 44 early restoration projects in Phase III of early restoration consistent with the project types included in the proposed programmatic alternative. The Trustees provided the public with 75 days to review and comment on the Draft Phase III ERP/PEIS (including a 15-day extension of the original announced 60-day comment period). To facilitate public participation, the Trustees also held public meetings in Mobile, Alabama; Long Beach, Mississippi; Belle Chasse, Thibodaux, and Lake Charles, Louisiana; Port Arthur, Galveston, and Corpus Christi, Texas; and Pensacola, Florida. The Trustees considered the public comments received, which informed the Trustees' analyses of programmatic alternatives and specific early restoration projects in the Final Phase III ERP/PEIS. A summary of the public comments received and the Trustees' responses to those comments are found in Chapter 13 of the Final Phase III ERP/PEIS.

A notice of availability of the Final Phase III ERP/PEIS was published in the **Federal Register** on June 26, 2014 (79 FR 36328). The Final Phase III ERP/PEIS proposed early restoration programmatic alternatives and evaluated the potential environmental effects and cumulative effects of those alternatives. The Final Phase III ERP/PEIS also proposed 44 projects as described in the Final Phase III ERP/PEIS, totaling an estimated cost of approximately $627 million.

Upon the completion of the Final Phase III ERP/PEIS, a Record of Decision

[1] Although a trustee under OPA by virtue of the proximity of its facilities to the *Deepwater Horizon* oil spill, DOD is not a member of the Trustee Council and does not participate in Trustee decision-making.

(ROD) has been prepared. The ROD documents decisions by the Trustees under OPA: (1) Selection of the Preferred Alternative for the Programmatic Early Restoration Plan; and (2) selection of 44 projects for the Final Phase III Early Restoration Plan, subject to completing remaining permitting and consultation requirements, as specifically identified in Section 9 of the ROD. The Trustees' selection of the 44 early restoration projects for the Final Phase III ERP/PEIS continues the process of using early restoration funding to restore natural resources, and ecological services, and to compensate for recreational use services injured or lost as a result of the *Deepwater Horizon* oil spill.

These projects are not intended to, and do not fully address all injuries caused by the spill or provide the extent of restoration needed to make the public and the environment whole. The Trustees anticipate that additional early restoration projects will be proposed as the early restoration process continues.

Administrative Record

An Administrative Record has been established and can be viewed electronically at *http://www.doi.gov/deepwaterhorizon/adminrecord/index.cfm.*

Authorities

The authorities for this action are the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*), the implementing Natural Resource Damage Assessment regulations found at 15 CFR part 990, the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), and the Framework Agreement.

Debora L. McClain,

Deputy DOI Deepwater Horizon NRDAR Case Manager.

[FR Doc. 2014–25794 Filed 10–30–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES002000 L16100000 DP0000 LXSS051M0000]

Notice of Availability of the Southeastern States Draft Resource Management Plan and Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan (RMP) and Draft Environmental Impact Statement (EIS) for the Southeastern States Planning Area and by this notice is announcing the opening of the comment period.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Draft RMP/EIS within 90 days following the date the Environmental Protection Agency publishes its Notice of Availability of the Draft RMP/EIS in the **Federal Register**. The BLM will announce future meetings or hearings and any other public participation activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the Southeastern States Draft RMP and Draft EIS by any of the following methods:

- *Email: SSFO_RMP@blm.gov.*
- *Fax:* 601–977–5440.
- *Mail:* BLM Southeastern States Field Office, 411 Briarwood Drive, Suite 404, Jackson, MS 39206.

Copies of the Southeastern States Draft RMP/EIS are available in the Southeastern States Field Office, at the above address, or may be viewed at *http://www.blm.gov/es/st/en/fo/Jackson_Home_Page/planning/southeastern_rmp.html.* A limited number of hard copies and DVD copies are available upon request while supplies last.

FOR FURTHER INFORMATION CONTACT: Gary Taylor, Planning and Environmental Coordinator, telephone 601–977–5413; address 411 Briarwood Drive, Suite 404, Jackson, MS 39206; email, *gtaylor@blm.gov*. 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 Mr. Taylor during normal business hours. The service is available 24 hours a day, 7 days a week, to leave a message or question for Mr. Taylor. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The planning area for the Southeastern States Draft RMP/EIS includes the States of Arkansas, Florida, Georgia, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia. The RMP will replace previous BLM plans including the Florida RMP (1995), the Arkansas Planning Analysis (2002), the Louisiana Planning Analysis (2002), and the Meadowood Farm (Virginia) Planning Analysis (2003).

Within the planning area, the decision-making scope of the RMP is limited to the decision area. The decision area includes 2,991 acres of BLM-administered surface land. In addition to BLM-administered surface land, the BLM is generally responsible for administration of Federal mineral estate, including mineral estate underlying other Federal agencies' lands.

Within the planning area there are approximately 19 million acres of Federal land ownership, including approximately 10.3 million acres administered by the U.S. Forest Service (USFS), 3.7 million acres by the National Park Service (NPS), 2.4 million acres by the U.S. Fish and Wildlife Service (USFWS), and 2.5 million acres by the Department of Defense (DOD). The RMP will not make mineral leasing decisions for USFS lands, except to say that leasing of mineral estate underlying National Forests would be conducted by the BLM consistent with USFS land use plans and leasing analyses. Within the planning area there are 28 National Forests, all of which are covered by existing Forest Plans. These plans include mineral leasing decisions where potential for mineral development was identified, and typically deferred mineral leasing decisions if there was no potential for mineral development. Forest Plans are revised, as needed; BLM is currently a Cooperating Agency on three Forest Plan revisions.

The BLM will not make mineral leasing decisions in this RMP for BLM mineral estate in areas identified as having no reasonably foreseeable development potential, based on Reasonably Foreseeable Development Scenario (RFDS) analyses completed by the BLM prior to the planning effort. Therefore, the decision area includes 742,505 subsurface acres where the surface is administered by other Federal agencies (mostly DOD, including the U.S. Army Corps of Engineers) and mineral development is reasonably foreseeable. The decision area also includes 280,680 acres of Federal mineral estate where the surface is non-Federal (i.e. State or local government, or private ownership).

The total decision area includes 1,026,176 acres of subsurface with BLM-administered surface on 2,991 of those acres. There is no decision area acreage in the states of Georgia, North Carolina, or South Carolina, as these states have no BLM-administered surface acreage and the RFDS showed no reasonably foreseeable development of Federal minerals in these states.

On October 8, 2008, the BLM issued a Notice of Intent in the **Federal**

Register to prepare the Southeastern States RMP (73 FR 58976), which initiated public scoping. Planning issues identified during scoping include management of energy and mineral resources and land ownership adjustments. During scoping, the BLM requested input from federally recognized tribes that have ancestral tribal homelands within the planning area.

Four alternatives were developed in response to the issues identified during the planning process. The ''No Action'' alternative represents current management, and is identified as Alternative A. Alternative B is the BLM's Preferred Alternative; it provides opportunities to use and develop Federal minerals while providing protection of natural resources. Alternative C places more emphasis on the protection of natural resources, and Alternative D emphasizes Federal mineral development.

Pursuant to 43 CFR 1610.7–2(b), this notice also announces the public comment period on proposed Areas of Critical Environmental Concern (ACECs). The Draft RMP/EIS evaluates and proposes designation for three ACECs. The resource use limitations which would apply to these areas, if formally designated, are described below.

The existing ACEC designation of 54.33 acres on the Jupiter Inlet Lighthouse Outstanding Natural Area would continue in Alternative A. Alternatives B, C and D propose increasing the size of the Jupiter Inlet Lighthouse Outstanding Natural Area ACEC to 85.83 acres. Values associated with this proposed ACEC include threatened, endangered, and sensitive wildlife and plants, rare vegetation communities, and Native American and maritime cultural resources. The resource use limitations which would occur are as follows: Closed to mining, mineral leasing and mineral material sale; right-of-way avoidance area; limit travel to designated routes; and Visual Resource Management (VRM) Class III.

Alternatives B and C propose designating The Lathrop Bayou tract ACEC (183.03 acres). This proposed ACEC is a peninsula with adjacent small islands containing upland longleaf pine and slash pine forests and habitat for red cockaded woodpecker, among other species. Values associated with this proposed ACEC include threatened, endangered, and sensitive wildlife and plants, and rare vegetation communities. The resource-use limitations which would occur if this proposed ACEC is formally designated are as follows: Closed to mining, mineral leasing and mineral material sale; right-of-way avoidance area; limit travel to designated routes.

Alternatives B and C propose designating the Egmont Key tract ACEC (55 acres). This proposed ACEC is the northern end of the key, located at the mouth of Tampa Bay, and contains beach transitioning to vegetated uplands with a lighthouse and remnants of an historic fort. Values associated with this proposed ACEC include threatened, endangered, and sensitive wildlife and plants, and historic cultural resources. The resource use limitations which would occur if this proposed ACEC is formally designated are as follows: Closed to mining, mineral leasing and mineral material sale; right-of-way avoidance area; limit travel to designated routes; and VRM Class III.

The BLM will respond to each substantive comment received during the public review and comment period by making appropriate revisions to the document, or explaining why the comment did not warrant a change. Notice of the availability of the Proposed RMP/Final EIS will be posted in the **Federal Register**.

In order to reduce the use of paper and control costs, the BLM strongly encourages the public to submit comments electronically via email. Comments submitted must include the commenter's name and street address. Whenever possible, please include reference to either the page or section in the Draft RMP/EIS to which the comment applies.

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.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2.

Bruce Dawson,

Manager, Southeastern States Field Office.

[FR Doc. 2014–25693 Filed 10–30–14; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[15X 1109AF LLUT980300–L11500000.PH0000–24–1A]

Utah Recreation Resource Advisory Council Meeting/Conference Call

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting/conference call.

SUMMARY: In accordance with the Federal Land Policy and Management Act, the Federal Advisory Committee Act, and the Federal Lands Recreation Enhancement Act, the Bureau of Land Management's (BLM) Utah Recreation Resource Advisory Council (RecRAC) will host a meeting/conference call.

DATES: The BLM-Utah RecRAC will host a meeting/conference call on Tuesday, Nov. 25, 2014, from 9:00 a.m.–11:00 a.m., Mountain Standard Time.

ADDRESSES: Those attending in person must meet at the BLM-Utah State Office, Monument A Conference Room, 440 West 200 South, Fifth Floor, Salt Lake City, Utah 84101.

FOR FURTHER INFORMATION CONTACT: If you wish to listen to the teleconference, orally present material during the teleconference, or submit written material for the RecRAC to consider during the teleconference, please notify Sherry Foot, Special Programs Coordinator, Bureau of Land Management, Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101; phone (801) 539–4195; or, *sfoot@blm.gov* no later than Friday, Nov. 21.

SUPPLEMENTARY INFORMATION: Agenda topics will consist of the Amended Business Plan for the San Juan River (proposes moving the San Juan River non-commercial boating permit lottery and reservation system to *www.recreation.gov* to improve customer service and permitting efficiency) and the Draft Business Plan for Recreation Use Permits in the BLM-Richfield Field Office (proposes to modify camping fees at Starr Spring, McMillan Spring, and Lonesome Beaver Campgrounds). A half-hour public comment period will take place from 10:30–11:00 a.m. The meeting is open to the public; however, transportation, lodging, and meals are the responsibility of the participating individuals.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to leave a message or question for the

above individual. The FIRS is available 24 hours a day, seven days a week. Replies are provided during normal business hours.

Authority: 43 CFR 1784.4–1.

Jenna Whitlock,

Associate State Director.

[FR Doc. 2014–25916 Filed 10–30–14; 8:45 am]

BILLING CODE 4310–DQ–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–550]

Trade and Investment Policies in India, 2014–2015

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Following receipt on September 25, 2014, of a joint request from the House Committee on Ways and Means and the Senate Committee on Finance (Committees) under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the U.S. International Trade Commission (USITC, or Commission) instituted investigation No. 332–550, *Trade and Investment Policies in India, 2014–2015.*

DATES:

March 24, 2015: Deadline for filing request to appear at the public hearing.

March 26, 2015: Deadline for filing pre-hearing briefs and statements.

April 7, 2015: Public hearing.

April 14, 2015: Deadline for filing post-hearing briefs and statements.

June 2, 2015: Deadline for filing all other written submissions.

September 24, 2015: Transmittal of Commission report to the Committees.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: Project Leaders James Stamps (202–205–3227 or *james.stamps@usitc.gov*) or Deputy Project Leader Jeff Okun-Kozlowicki (202–205–5991 or *jeff.okun.kozlowicki@usitc.gov*) for information specific to this investigation. For information on the legal aspects of this investigation, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: In their request letter the Committees noted that the Commission is in the process of completing an investigation and report on India's trade, investment, and industrial policies covering the period 2003 through mid-2014 (Commission investigation No. 332–543, *Trade, Investment, and Industrial Policies in India: Effects on the U.S. Economy*). The Committees also noted the recent national elections in India and the formation of a new Bharatiya Janata Party-led government.

As stated in the letter, in light of the new government and the Committees' interest in receiving the most comprehensive and up-to-date information possible, the Committees asked the Commission to conduct a second investigation concerning any significant changes since the first USITC investigation to India's industrial policies that discriminate against U.S. trade and investment. As requested by the Committees, the Commission will include in its report for the second investigation:

- Information about any significant changes by the new Indian government to the trade and investment policies identified in the Commission's first report (which is to be delivered to the Committees by December 15, 2014); and
- Information on any new relevant trade and investment policies and practices in India, focusing on the period from mid-2014. The Committees asked that the Commission deliver its second report by September 24, 2015. The Committees also noted that they intend to make the Commission's report available to the public and asked that the report not contain any confidential business information.

Public Hearing: A public hearing in connection with this investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on April 7, 2015. Requests to appear at the public hearing should be filed with the Secretary, no later than 5:15 p.m., March 24, 2015, in accordance with the requirements in the ''Submissions'' section below. All pre-hearing briefs and statements should be filed not later than 5:15 p.m., March 26, 2015; and all post-hearing briefs and statements should be filed not later than 5:15 p.m., April 14, 2015. In the event that, as of the close of business on March 24, 2015, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant should contact the Office of the Secretary at 202–205–2000 after March 24, 2015, for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to file written submissions concerning this investigation. All written submissions should be addressed to the Secretary, and should be received not later than 5:15 p.m., June 2, 2015. All written submissions must conform with the provisions of section 201.8 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 and the Commission's Handbook on Filing Procedures require that interested parties file documents electronically on or before the filing deadline and submit eight (8) true paper copies by 12:00 p.m. eastern time on the next business day. In the event that confidential treatment of a document is requested, interested parties must file, at the same time as the eight paper copies, at least four (4) additional true paper copies in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

The Commission intends to publish summaries of the positions of interested persons in an appendix to its report. Persons wishing to have a summary of their position included in the appendix should include a summary with their written submission. The summary may not exceed 500 words, should be in MSWord format or a format that can be easily converted to MSWord, and should not include any confidential business information. The summary will be published as provided if it meets these requirements and is germane to the subject matter of the investigation. In the appendix the Commission will

identify the name of the organization furnishing the summary, and will include a link to the Commission's Electronic Document Information System (EDIS) where the full written submission can be found. Any submissions that contain confidential business information (CBI) must also conform with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties. In its request letter, the Committees stated that they intend to make the Commission's report available to the public, and asked that the Commission not include any confidential business information in the report that it sends to the Committees. Any confidential business information received by the Commission in this investigation and used in preparing this report will not be published in a manner that would reveal the operations of the firm supplying the information.

Issued: October 28, 2014.

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–25926 Filed 10–30–14; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1125–0010]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Notice of Appeal to the Board of Immigration Appeals From a Decision of a DHS Officer

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR), 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. This proposed information collection was previously published in the **Federal Register** at Volume 79, Number 168, page 51607, on August 29, 2014, allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until December 1, 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 Jeff Rosenblum, General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia 20530; telephone: (703) 305–0470. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or send to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: 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 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/or

—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:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Notice of Appeal to the Board of Immigration Appeals from a Decision of a DHS Officer—Form EOIR–29.

3. *The agency form number:* Form EOIR–29.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: A party who appeals a decision of a DHS Officer to the Board of Immigration Appeals (Board).

Other: None.

Abstract: A party affected by a decision of a DHS Officer may appeal that decision to the Board, provided that the Board has jurisdiction pursuant to 8 CFR 1003.1(b). The party must complete the Form EOIR–29 and submit it to the DHS office having administrative control over the record of proceeding in order to exercise the regulatory right to appeal.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that there are 6,569 respondents, 6,569 annual responses, and that each response takes 30 minutes to complete.

6. *An estimate of the total public burden (in hours) associated with the collection:* 3,284.5 annual burden 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., 3E.405B, Washington, DC 20530.

Dated: October 28, 2014.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2014–25917 Filed 10–30–14; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

Notice of Availability of an Environmental Assessment on a Proposal To Award a Contract for New Low Security Beds to One Private Contractor To House Approximately 2,000 Federal, Low-Security, Adult Male, Non-U.S. Citizen, Criminal Aliens at a Contractor-Owned, Contractor-Operated Correctional Facility Under the CAR 15, Requirement B Initiative

AGENCY: Federal Bureau of Prisons, U.S. Department of Justice.

ACTION: Environmental Assessment.

SUMMARY: The U.S. Department of Justice, Federal Bureau of Prisons (BOP) announces the availability of the Criminal Alien Requirement 15, Requirement B Environmental Assessment (EA) for the proposal to award one contract to house up to 2,000

federal, low-security, adult males, non-U.S. citizen, criminal aliens within one existing contractor-owned, contractor-operated facility.

Background Information: Pursuant to Section 102, 42 U.S.C. 4332, of the National Environmental Policy Act (NEPA) of 1969, as amended, the Council on Environmental Quality Regulations for Implementing NEPA (40 CFR parts 1500–1508), and the *BOP Procedures for Implementing NEPA* (28 CFR part 61, Appendix A), the BOP prepared an Environmental Assessment (EA) to analyze the impacts of awarding one contract to house up to 2,000 low-security, adult male, non-U.S. citizen, criminal aliens within one existing contractor-owned and contractor-operated correctional facility.

It is anticipated that the number of inmates will continue to rise for several reasons. Federal court sentencing guidelines are resulting in longer terms of confinement for serious crimes. Moreover, there is an increase in immigration and offenders, along with a greater effort to combat organized crime and trafficking. As a result, existing BOP facilities are at capacity. In response, the BOP has focused on ways to reduce prison overcrowding by requesting additional contract beds for low security, adult male criminal aliens, expansion of current facilities, and building and operating new medium and high security facilities. The purpose of the project is to acquire additional bed space to address the need to reduce overcrowding in existing BOP facilities as a result of increases in convictions and sentence terms.

The BOP requires flexibility in managing existing low-security bed space as well as the anticipated future needs for low-security bed space. Use of an existing contractor-owned and operated correctional facility provides the BOP the flexibility needed to meet population capacity needs in a timely manner, conform to federal law, and maintain fiscal responsibility while successfully meeting the mission of the BOP.

The process to identify contracting opportunities for securing additional inmate bed space in support of the increasing needs of the BOP involved the BOP advertising for interested vendors to respond to the request for proposal (RFP) with options for meeting the requirements.

Based on the responses to the solicitation the BOP had four potential alternatives. The solicitation RFP–PCC–0022 (CAR 15 Requirement B) identified the evaluation criteria under which each offeror's proposal would be considered and evaluated. The non-price based evaluation criteria that consist of the following in descending order of importance:

- Past Performance
- Technical Proposal
- Environment
- Small Disadvantaged Business Participation

Project Information:

The proposed action is to award one contract to house up to 2,000 federal low-security, adult male, non-U.S. citizen, criminal aliens at an existing contractor-owned and contractor-operated correctional facility. Under the Proposed Action, the selected contractor would be required to operate the facility in a manner consistent with the mission and requirements of the BOP. All inmate services would be developed in a manner that complies with the BOP's contract requirements, as well as applicable federal, state, and local laws and regulations. In addition, the facility would be within proximity, and have access to, ambulatory, fire and police protection services.

The federal inmates assigned to this facility primarily would consist of inmates with sentences of 90 months or less remaining to be served. Inmates are anticipated to be federal, low-security, adult male, non-U.S. citizen, criminal aliens; however, the BOP may designate any inmate within its custody to serve their sentence in this facility.

Four existing privately owned and operated correctional facilities, one in Minnesota, two in Oklahoma, and one in Ohio, met the evaluation criteria of the BOP's solicitation for CAR 15 Requirement B. Each of the following existing facilities has been evaluated in this EA. In addition, the No Action Alternative is evaluated to determine baseline conditions and comply with the provisions of NEPA.

- Prairie Correctional Facility. Located in Appleton, Minnesota.
- Northeast Ohio Correctional Center. Located in Youngstown, Ohio.
- Great Plains Correctional Facility. Located in Hinton, Oklahoma.
- Diamondback Correctional Facility. Located in Watonga, Oklahoma.

No other facilities are under consideration by the BOP. Although the four alternatives have been evaluated within the EA, an environmentally preferred alternative has not been identified due to the pending contracting action.

Based on the analysis presented in the EA, there would be no significant impacts on natural and cultural resources, socioeconomics, environmental justice, community facilities and services, transportation and traffic, infrastructure and utilities, noise, and air quality as a result of the implementation of the proposed action under Alternative 1, Alternative 2, Alternative 3, or Alternative 4. Therefore, the BOP has determined there would be no significant impacts associated with the implementation of the proposed action.

Availability of the Environmental Assessment

The comment/review period will begin on October 31, 2014 and conclude on December 1, 2014. The EA and other information regarding the proposed action are available upon request by contacting: Thomas A. Webber, Chief, Capacity Planning and Construction Branch, Federal Bureau of Prisons, 320 First Street NW., Washington, DC 20534 (Telephone: (202) 514–6470, Fax: (202) 616–6024, or Email: *twebber@bop.gov*).

Dated: October 22, 2014.

Thomas A. Webber,

Chief, Capacity Planning and Construction Branch.

[FR Doc. 2014–25513 Filed 10–30–14; 8:45 am]

BILLING CODE 4410–CW–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Federal Employees' Compensation Act Medical Report Forms, Claim for Compensation

ACTION: Notice.

SUMMARY: On October 31, 2014, the Department of Labor (DOL) will submit the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) revision titled, ''Federal Employees' Compensation Act Medical Report Forms, Claim for Compensation,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before December 1, 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=201406-1240-002 (this link will only become active on November 1, 2014) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OWCP, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Federal Employees' Compensation Act (FECA) medical report forms and claim for compensation information collection requirements. Forms CA–7, CA–16, CA–17, CA–20, CA–1331, CA–1332, OWCP–5A, OWCP–5B, and OWCP–5C are used for filing claims for wage loss or permanent impairment due to a Federal employment-related injury and to obtain necessary medical documentation to determine whether a claimant is entitled to benefits under the FECA. This information collection has been classified as a revision, because of a change to the information collections needed to comply with current Federal law and FECA Bulletin No. 14–01, December 12, 2013. This change impacts augmented compensation, survivor benefits, death gratuity, schedule awards unpaid at death, and other Division of Federal Employees' Compensation administered benefits. Changes are also being made to comply with the Department of Treasury regulations requiring Federal payments to be made via electronic funds transfer instead of by paper checks. In addition, the forms now include an accommodation statement for claimants with mental and/or physical limitations to contact the OWCP if they need further assistance in the claims process. The OWCP has also provided additional guidance to physicians when determining work tolerance limitations to assist in return to work efforts. Finally, the ICR updates reference codes for diseases, signs and symptoms, abnormal findings, complaints, social circumstances, and external causes of injury or diseases.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1240–0046. The current OMB approval is scheduled to expire on October 31, 2014; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on July 3, 2014 (79 FR 38072).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section by December 1, 2014. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1240–0046. 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–OWCP.

Title of Collection: Federal Employees' Compensation Act Medical Report Forms, Claim for Compensation.

OMB Control Number: 1240–0046.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 282,353.

Total Estimated Number of Responses: 282,353.

Total Estimated Annual Time Burden: 25,605 hours.

Total Estimated Annual Other Costs Burden: $110,118.

Dated: October 27, 2014.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2014–25895 Filed 10–30–14; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; General Working Conditions in Shipyard Employment Standard

ACTION: Notice.

SUMMARY: On October 31, 2014, the Department of Labor (DOL) will submit the Occupational Safety and Health Administration's (OSHA) sponsored information collection request (ICR) titled, ''General Working Conditions in Shipyard Employment Standard,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before December 1, 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=201410-1218-001* (this link will only become active on November 1, 2014) 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–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: 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 authority for the General Working Conditions in Shipyard Employment Standard information collection requirements codified in regulations 29 CFR part 1915, subpart F. The Standard covers provisions that address conditions and operations in shipyard employment that may produce hazards for workers. Subpart F consists of 14 sections that include housekeeping; lighting; utilities; working alone; vessel radar and communication systems; lifeboats; medical services and first aid; sanitation; control of hazardous energy; safety color code for marking physical hazards; accident prevention signs and tags; retention of Department of Transportation markings, placards, and labels; motor vehicle safety equipment, operation and maintenance; and servicing multi-piece and single-piece rim wheels. Occupational Safety and Health of 1970 sections 2(b)(9) and 8(c) authorize this information collection. *See* 29 U.S.C. 651(b)(9) and 657(c).

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 1218–0259.

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 October 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 August 22, 2014 (79 FR 49819).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section by December 1, 2014. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0259. 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–OSHA.

Title of Collection: General Working Conditions in Shipyard Employment Standard.

OMB Control Number: 1218–0259.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 2,759.

Total Estimated Number of Responses: 321,292.

Total Estimated Annual Time Burden: 101,376 hours.

Total Estimated Annual Other Costs Burden: $3,341.

Dated: October 27, 2014.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2014–25870 Filed 10–30–14; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0187]

Electrical Standards for Construction and General Industry; Extension of the Office of Management and Budget's (OMB) Approval of the Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its request for an extension of the information collection requirements contained in the Electrical Standards for Construction (29 CFR part 1926, subpart K) and the Electrical Standards for General Industry (29 CFR part 1910, subpart S). The Standards address safety procedures for installation and maintenance of electric utilization equipment that prevent death and serious injuries among construction and general industry workers in the workplace caused by electrical hazards.

DATES: Comments must be submitted (postmarked, sent, or received) by December 30, 2014.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2011–0187, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA

docket number (OSHA–2011–0187) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 et seq.) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The information collection requirements specified by the Electrical Standards for Construction and the Electrical Standards for General Industry alert workers to the presence and types of electrical hazards in the workplace, thereby preventing serious injury and death by electrocution. The information collection requirements in these Standards involve the following: The employer using electrical equipment that is marked with the manufacturer's name, trademark, or other descriptive markings that identify the producer of the equipment, and marking the equipment with the voltage, current, wattage, or other ratings necessary; requiring each disconnecting means for motors and appliances to be marked legibly to indicate its purpose, unless located and arranged so the purpose is evident; requiring the entrances to rooms and other guarded locations containing exposed live parts to be marked with conspicuous warning signs forbidding unqualified persons from entering; and, for construction employers only, establishing and implementing the assured equipment grounding conductor program instead of using ground-fault circuit interrupters.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is proposing an adjustment increase to the existing burden hours from 170,098 to 220,849 for the Electrical Standards for Construction and for General Industry, a total increase of 50,751 hours. The cost of the labels remains the same at $3.75 each, however, the cost of caution and warning signs increased to $10.95 6.95, a total increase of $4.00 each. The total cost over a five-year period to the employer is $18,863,802 (or $3,772,760 per year). The Agency will summarize any comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in these Standards.

Type of Review: Extension of a currently approved collection.

Title: Electrical Standards for Construction (29 CFR part 1926, subpart K) and for General Industry (29 CFR part 1910, subpart S).

OMB Control Number: 1218–0130.

Affected Public: Business or other for-profits; Not-for-profit institutions; Federal Government; State, local, or tribal governments.

Number of Respondents: 652,902.

Frequency of Response: Occasionally.

Total Responses: 3,041,060.

Average Time per Response: Varies from three minutes (.08 hour) to post and construct each sign to four hours for a certified electrical engineer to document a hazardous classified location.

Estimated Total Burden Hours: 220,849.

Estimated Cost (Operation and Maintenance): $3,772,760.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number (Docket No. OSHA–2011–0187) for the ICR. You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 et seq.) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on October 28, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–25941 Filed 10–30–14; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

[NARA–2015–008]

National Industrial Security Program Policy Advisory Committee (NISPPAC)

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of NISPPAC Advisory Committee Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. app 2) and implementing regulation 41 CFR 101–6, NARA announces the following committee meeting.

DATES: The meeting will be held on November 19, 2014, from 10:00 a.m. to 12:00 p.m., EDT.

ADDRESSES: National Archives and Records Administration, 700 Pennsylvania Avenue NW., Archivist's Reception Room, Room 105, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: David O. Best, Senior Program Analyst, by mail at ISOO; National Archives Building; 700 Pennsylvania Avenue NW.; Washington, DC 20408, by telephone number at (202) 357–5123, or by email at *david.best@nara.gov.* Contact ISOO at *ISOO@nara.gov* and the NISPPAC at *NISPPAC@nara.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss National Industrial Security Program policy matters. The meeting will be open to the public. However, due to space limitations and access procedures, you must submit the name and telephone number of individuals planning to attend to the Information Security Oversight Office (ISOO) no later than Friday, November 14, 2014. ISOO will provide additional instructions for accessing the meeting's location.

Dated: October 27, 2014.

Patrice Little Murray,

Committee Management Officer.

[FR Doc. 2014–25886 Filed 10–30–14; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Li Ling Hamady, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On September 24, 2014 the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on October 27, 2014 to: Dr. Mike Polito, Permit No. 2015–008.

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2014–25875 Filed 10–30–14; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250–LA and 50–251–LA; ASLBP No. 15–935–02–LA–BD01]

Florida Power & Light Company: Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission, *see* 37 FR 28,710 (Dec. 29, 1972), and the Commission's regulations, *see, e.g.*, 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

Florida Power & Light Company (Turkey Point Nuclear Generating Units 3 and 4)

This proceeding involves an application by Florida Power & Light Company for a license amendment for Turkey Point Nuclear Generating Units 3 and 4, located in Miami-Dade County, Florida. The requested amendment seeks to revise the ultimate heat sink (UHS) water temperature limit in the Turkey Point Technical Specifications and to revise surveillance requirements for monitoring the UHS temperature and component cooling water heat exchangers. In response to a notice filed in the **Federal Register**, *see* 79 FR 47,689 (Aug. 14, 2014), a Petition to Intervene was filed initially via email on October 14, 2014, and subsequently via the Electronic Information Exchange on October 17, 2014, by Barry White on behalf of Citizens Allied for Safe Energy, Inc.

The Board is comprised of the following Administrative Judges:

Michael M. Gibson, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Dr. Michael F. Kennedy, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Dr. William W. Sager, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule. *See* 10 CFR 2.302.

Rockville, Maryland.

Dated: October 24, 2014.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2014–25976 Filed 10–30–14; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

Sunshine Act Meetings

TIME AND DATE: November 19, 2014, at 11 a.m.

PLACE: Commission hearing room, 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001.

STATUS: The Postal Regulatory Commission will hold a public meeting to discuss the agenda items outlined below. Part of the meeting will be open to the public as well as audiocast, and the audiocast may be accessed via the Commission's Web site at *http://www.prc.gov.* Part of the meeting will be closed. After the close of the public part of the meeting, a *public listening session* will be offered to allow the public to comment on any agenda item or related subject matter. The Commission will then resume in its closed session.

MATTERS TO BE CONSIDERED: The agenda for the Commission's November 19, 2014 meeting includes the items identified below.

PORTIONS OPEN TO THE PUBLIC:

1. Report from the Office of Public Affairs and Government Relations on legislative activities and the handling of rate and service inquiries from the public.
2. Report from the Office of General Counsel on the status of Commission dockets.
3. Report from the Office of Accountability and Compliance.
4. Report from the Office of the Secretary and Administration.
5. Presentation to Commissioners on the Codification Process for Regulations by a representative of the National Archives and Records Administration—Office of the Federal Register.

PORTIONS CLOSED TO THE PUBLIC:

6. Discussion of pending litigation.

CONTACT PERSON FOR MORE INFORMATION: David A. Trissell, General Counsel, Postal Regulatory Commission, 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001, at 202–789–6820 (for agenda-related inquiries) and Shoshana M. Grove, Secretary of the Commission, at 202–789–6800 or *shoshana.grove@prc.gov* (for inquiries related to meeting location, changes in date or time of the meeting, access for handicapped or disabled persons, the audiocast, or similar matters). The Commission's Web site may also provide information on changes in the date or time of the meeting.

By direction of the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2014–26016 Filed 10–29–14; 11:15 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail 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:* October 31, 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 October 27, 2014, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 97 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2015–5, CP2015–6.

Stanley F. Mires,

Attorney, Federal Requirements.

[FR Doc. 2014–25963 Filed 10–30–14; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail 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:* October 31, 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 October 27, 2014, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 98 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2015–6, CP2015–7.

Stanley F. Mires,

Attorney, Federal Requirements.

[FR Doc. 2014–25961 Filed 10–30–14; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Standard Mail 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 negotiated service agreement regarding First Class Mail and Standard Mail to the market-dominant product list within the Mail Classification Schedule.

DATES: *Effective date:* October 31, 2014.

FOR FURTHER INFORMATION CONTACT: Valerie J. Pelton, 202–268–3049.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that on October 27, 2014, pursuant to 39 U.S.C. 3642 and 3622(c)(10), it filed with the Postal Regulatory Commission a *Notice of the United States Postal Service of Filing of Contract and Supporting Data and Request to Add, Discover Financial Services Negotiated Service Agreement to the Market-Dominant Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2015–3, R2015–2.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2014–25967 Filed 10–30–14; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail 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:* October 31, 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 October 27, 2014, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 96 to Competitive Product List.* Documents are available at

www.prc.gov, Docket Nos. MC2015–4, CP2015–5.

Stanley F. Mires,

Attorney, Federal Requirements.

[FR Doc. 2014–25966 Filed 10–30–14; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

Extension: Rule 12d2–2 and Form 25; SEC File No. 270–86, OMB Control No. 3235–0080.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval for Rule 12d2–2 (17 CFR 240.12d2–2) and Form 25 (17 CFR 249.25) Removal and Notification of Removal from Listing and/or Registration.

On February 12, 1935, the Commission adopted Rule 12d2–2,[1] and Form 25 under the Securities Exchange Act of 1934 (15 U.S.C. 78b *et seq.*) (''Act''), to establish the conditions and procedures under which a security may be delisted from an exchange and withdrawn from registration under Section 12(b) of the Act.[2] The Commission adopted amendments to Rule 12d2–2 and Form 25 in 2005.[3] Under the amended Rule 12d2–2, all issuers and national securities exchanges seeking to delist and deregister a security in accordance with the rules of an exchange must file the adopted version of Form 25 with the Commission. The Commission also adopted amendments to Rule 19d–1 under the Act to require exchanges to file the adopted version of Form 25 as notice to the Commission under Section 19(d) of the Act. Finally, the Commission adopted amendments to exempt standardized options and security futures products from Section 12(d) of the Act. These amendments are intended to simplify the paperwork and procedure associated with a delisting and to unify general rules and procedures relating to the delisting process.

The Form 25 is useful because it informs the Commission that a security previously traded on an exchange is no longer traded. In addition, the Form 25 enables the Commission to verify that the delisting and/or deregistration has occurred in accordance with the rules of the exchange. Further, the Form 25 helps to focus the attention of delisting issuers to make sure that they abide by the proper procedural and notice requirements associated with a delisting and/or a deregistration. Without Rule 12d2–2 and the Form 25, as applicable, the Commission would be unable to fulfill its statutory responsibilities.

There are 18 national securities exchanges that could possibly be respondents complying with the requirements of the Rule and Form 25.[4] The burden of complying with Rule 12d2–2 and Form 25 is not evenly distributed among the exchanges, however, since there are many more securities listed on the New York Stock Exchange, the NASDAQ Stock Market, and NYSEMKT than on the other exchanges. However, for purposes of this filing, the Commission staff has assumed that the number of responses is evenly divided among the exchanges. Since approximately 690 responses under Rule 12d2–2 and Form 25 for the purpose of delisting and/or deregistration of equity securities are received annually by the Commission from the national securities exchanges, the resultant aggregate annual reporting hour burden would be, assuming on average one hour per response, 690 annual burden hours for all exchanges (18 exchanges × an average of 38.3 responses per exchange × 1 hour per response). In addition, since approximately 100 responses are received by the Commission annually from issuers wishing to remove their securities from listing and registration on exchanges, the Commission staff estimates that the aggregate annual reporting hour burden on issuers would be, assuming on average one reporting hour per response, 100 annual burden hours for all issuers (100 issuers × 1 response per issuer × 1 hour per response). Accordingly, the total annual hour burden for all respondents to comply with Rule 12d2–2 is 790 hours (690 hours for exchanges + 100 hours for issuers). The related internal labor costs associated with these burden hours are $42,797.50 total ($36,397.50 for exchanges ($52.75 per response × 690 responses) and $6,400 for issuers ($64 per response × 100 responses)).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov*.

Dated: October 27, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–25876 Filed 10–30–14; 8:45 am]

BILLING CODE 8011–01–P

[1] *See* Securities Exchange Act Release No. 98 (February 12, 1935).

[2] *See* Securities Exchange Act Release No. 7011 (February 5, 1963), 28 FR 1506 (February 16, 1963).

[3] *See* Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005).

[4] The staff notes that a few of these 18 registered national securities exchanges only have rules to permit the listing of standardized options, which are exempt from Rule 12d2–2 under the Act. Nevertheless, we have counted national securities exchanges that can only list options as potential respondents because these exchanges could potentially adopt new rules, subject to Commission approval under Section 19(b) of the Act, to list and trade equity and other securities that have to comply with Rule 12d2–2 under the Act. Notice registrants that are registered as national securities exchanges solely for the purposes of trading securities futures products have not been counted since, as noted above, securities futures products are exempt from complying with Rule 12d–2–2 under the Act and therefore do not have to file Form 25.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73438; File No. SR–OCC–2014–15]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change To Process All Sell Transactions Prior to the Exercise of Long Options in Market-Maker Accounts To Ensure That Only Net Long Positions May Be Exercised

October 27, 2014.

I. Introduction

On July 17, 2014, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2014–15 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on July 31, 2014.[3] The Commission received five comment letters on the proposal.[4] On September 4, 2014, OCC extended the time for Commission action on the proposed rule change to October 27, 2014. For the reasons discussed below, the Commission is granting approval of the rule change, as proposed.

II. Description

Background

According to OCC, the purpose of the dividend play trading strategy is to capture the dividend income of a stock through the exercise of in-the-money call options on the day prior to the stock's ''ex-dividend'' date, which is the date that determines whether the holder of a stock is entitled to the stock's dividend. Where stock is transferred before the ex-dividend date, the new owner of the stock is entitled to the dividend. In order to capture this dividend income, a trader will buy a large number of call options of the same series on a stock on the day prior to the stock's ex-dividend date and then write an offsetting number of call options of the same series on the same stock at the same price. Because the two transactions are exactly offsetting and executed at the same price, the trader's position in the call options is net neutral and has limited market risk. At the end of the day, the trader then exercises all of its long call options even though the trader's net position is neutral.

OCC, using its current standard assignment process, assigns all of that day's exercised long call options of the same series across all options writers. OCC processes exercises after option purchases but before options sales. This processing sequence permits a market-maker executing a dividend play to buy and sell equal quantities of call options of a given series and exercise the purchased call options even though the market-maker's position is neutral. OCC believes this would make the conventional dividend play impossible. OCC currently processes exercises before sales in order to reduce operational risk for clearing members clearing options transactions in accounts other than market-makers.

In December 2012, the Securities Industry and Financial Markets Association's (''SIFMA'') Listed Options Trading Committee requested that OCC formally review dividend plays.[5] According to OCC, SIFMA expressed a concern that OCC could suffer losses as a result of an operational error in processing dividend plays. Because successful dividend plays rely in part on the dividend trader's having a large position compared to the pre-existing open interest in the series of options subject to the dividend play, SIFMA believed that an operational error in processing dividend trades could result in a clearing member being liable for a settlement amount that could place the clearing member in financial peril and potentially exceed the collateral deposited by the clearing member with OCC.

Following receipt of the SIFMA letter, OCC initiated a review of dividend plays. Upon completion of a comprehensive review, OCC noted that dividend plays generally may be perceived negatively in the marketplace and have been criticized as unfair to retail investors and as distorting options transactions volume. OCC determined that while it should not take action to eliminate or restrict dividend plays based on these factors, nor should it facilitate these transactions. OCC's processing sequence, under which sale transactions are processed after exercises, was designed to reduce the operational risk to clearing members that results from potential miscoding of, for example, an opening trade for the account of one clearing member customer as a closing trade for the account of another clearing member customer in accounts that are carried on a gross basis.[6] However, this coding risk does not exist with respect to market-maker accounts, where positions are carried on a net basis. Accordingly, OCC concluded that its processing sequence unnecessarily allowed certain market-makers to execute dividend plays and, therefore, proposed to change the processing sequence so that for these accounts sale transactions are processed before exercises. OCC believes that the change would have the effect of significantly restricting dividend plays because large long positions that would otherwise be exercised would be offset by sale transactions.

Proposed Amendment

OCC is proposing to amend its rules to add an interpretation and policy to Rule 801 and to Rule 805 to state that, with respect to Market-Maker Accounts,[7] sell transactions will be processed before exercises. If OCC processed sales before exercises, market-makers' purchases and sales on a given day would offset each other, and when OCC processed the exercises, there would be no net long call positions to exercise. OCC is also proposing to modify its systems to make a corresponding change in the processing sequence. According to OCC, this change in the processing sequence would only apply to Market-Maker Accounts (and, potentially subaccounts in JBO Participants' accounts), and would not change the processing

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 72677 (July 25, 2014), 79 FR 44480 (July 31, 2014).

[4] *See* letters from Suzanne Shatto, dated August 18, 2014 (''Shatto Letter''); Robert P. Bramnik, Duane Morris, LLP, and James D. Van De Graaf, Katten Muchin Rosenman LLP, on behalf of Bedrock Trading LP, Elm Trading LP, First Derivative Traders LP, Keystone Trading Partners, and Largo Trading LP (''Duane Morris''), dated August 19, 2014 (''Duane Morris Letter''); Elle Greene, Vice President, Securities Industry and Financial Markets Association (''SIFMA''), dated August 21, 2014 (''SIFMA Letter''); Abraham Kohen, President, AK FE Consultants LLC, dated August 24, 2014 (''Kohen Letter''); James E. Brown, Executive Vice President, General Counsel and Secretary, OCC, dated September 9, 2014 (''OCC Letter'').

[5] *See* OCC Letter citing to Letter from Ellen Greene, Vice President of SIFMA, to Wayne P. Luthringshausen, Chairman and Chief Executive Officer of OCC (December 3, 2012) available at *http://www.sifma.org/issues/item.aspx?id=8589942317*.

[6] According to OCC, accounts that are carried on a gross basis can be both long and short the same series. This means that trades must be coded as opening or closing transactions.

[7] ''Market Maker Account'' is a defined term in Article I of OCC's By Laws. Because the definition of ''Market-Maker Account'' in Article 1 of OCC's By-Laws includes a JBO Participants' account, the interpretation and policy clarifies that this netting will not be applied to a JBO Participants' account until such time as OCC determines on not less than 30 days' notice to clearing members that OCC is able to identify, on a subaccount basis, the transactions of a JBO Participant within a JBO Participants' account, in which case a JBO Participants' account shall be considered a Market-Maker Account.

sequence applicable to clearing member accounts other than Market-Maker Accounts.

III. Summary of Comments Received and OCC's Responses

The Commission received five comment letters in response to the proposed rule change; two comment letters supporting the proposal,[8] one comment letter suggesting a possible alternative to the proposal,[9] one comment letter opposing the proposal,[10] and one comment letter responding to the comment letter opposing the proposal.[11] The Commission has reviewed and taken into full consideration all of the comments received.

The Shatto Letter and SIFMA Letter, express support for the proposed rule change.[12] The Shatto Letter notes that the proposal will provide clarity to the process and reduce risk for all parties. The SIFMA Letter supports the proposal because it believes the risk of engaging in dividend trade strategies outweighs any potential profit for those who participate in such a strategy. Further, the SIFMA Letter ''applauded'' the rigorous approach taken by OCC to evaluate the risks and other factors associated with dividend trade strategies and evaluate whether any issues or unintended consequences would occur as a result of changing the processing sequence for market makers. The SIFMA Letter recommends that OCC continue its efforts to prevent and eliminate the dividend play trading strategy. The Kohen Letter does not express support or opposition to OCC's proposal, but rather proposes an alternative proposal that would require market-makers to mark all their transactions as opening or closing and process trades and exercises notices in the same manner OCC processes transactions in non-market-maker accounts.

The Duane Morris Letter, representing five market-makers, opposes OCC's proposal and advocates the Commission disapprove the proposed rule change. Below is a discussion of the issues raised by Duane Morris and OCC's response to those concerns.

A. *The Proposed Rule Change Is Not Grounded in the Exchange Act*

The Duane Morris Letter contends that the proposed rule change is not consistent with Section 17A(a)(2)(A) of the Exchange Act[13] because it does not display ''due regard'' for the maintenance of fair competition among brokers and dealers, and asserts that the ''true'' purpose of the proposed rule change is to eliminate a specific trading practice at the expense of, and detriment to, certain market makers. Additionally, the Duane Morris Letter argues that SRO rules relating to trades and trading practices are the province of national securities exchanges and that it is beyond the jurisdiction of a clearing agency to neutralize trading and a trading strategy effected on a national securities exchange simply because a clearing broker may make an operational error. The Duane Morris Letter also contends that the proposed rule change, if approved, would essentially negate the rules of various options exchanges concerning opening and closing transactions without any statutory or regulatory authority to do so.

The Duane Morris Letter further contends that OCC's statutory basis for the proposed rule change was not valid. Specifically, the Duane Morris Letter asserted that OCC concedes that any potential operational risk posed by dividend plays is at most ''de minimis'' since OCC acknowledges in the proposed rule change that dividend plays represent only a small number of OCC cleared options, the majority of which are cleared through two large and well-capitalized clearing members that have a robust risk management process.

In response, OCC contends that Section 17A(a)(2)(A) of the Exchange Act[14] does not set forth the standards specifically applicable to registered clearing agency rule changes, which are instead contained in Section 17A(b) of the Exchange Act.[15]

Further, OCC claims that it has the authority under Section 17A(b)(3)(F) of the Exchange Act[16] and Rule 17Ad–22(d)(4)[17] to implement a policy that has been approved by OCC's Board of Directors . Specifically, OCC cites to Section 17A(b)(3)(F) of the Exchange Act,[18] which requires registered clearing agencies to have rules designed to promote the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest. OCC further cites to Rule 17Ad–22(d)(4),[19] which requires registered clearing agencies to identify sources of operational risk and to develop appropriate systems, controls, and procedures to minimize those sources.

OCC also emphasizes that it does not seek to police registered national securities exchanges or broker-dealers trading options on such exchanges.[20] OCC notes that it began investigating the potential risks that dividend plays posed to OCC and market participants following a well-publicized trading error and approximately $10 million loss, which OCC believed to be related to the dividend trading strategy. OCC further notes that market participants through SIFMA also requested that it investigate the dividend trading strategy in light of its negative perception in the marketplace and criticism that it is unfair to retail investors and distorts options transactions volume.

OCC also contends that its trade processing sequence, in which sales are processed after exercises, is the primary reason why dividend plays are even possible. According to OCC, it has historically used such a sequence to address a potential miscoding of opening and closing transactions—a risk not applicable to market-maker accounts—and that it did not anticipate that certain market-makers would use this sequence to execute net neural transactions with limited market risk, resulting in a reallocation of unassigned short positions from retail investors to market-makers executing the trading strategy. As originally expressed in the rule change, as proposed, OCC reiterates that while it should not act to eliminate or restrict dividend plays based on negative perception and the abuse of retail investors, neither should it facilitate these transactions. Thus, according to OCC, upon the urging of market participants and after a comprehensive review of the trading strategy, OCC decided to adopt a policy of not facilitating dividend plays, which are made possible primary by OCC's legacy choice of a particular processing sequence.

Finally, OCC also contends that it has a valid statutory basis supporting the proposed rule change to curtail the use of dividend plays. OCC asserts that neither Section 17A(b)(3)(F) of the Exchange Act[21] or Rule 17Ad–22(d)(4)[22] limit OCC to only addressing

[8] *See* Shatto Letter and SIFMA Letter.

[9] *See* Kohen Letter.

[10] *See* Duane Morris Letter.

[11] *See* OCC Letter.

[12] *See* Shatto Letter and SIFMA Letter.

[13] 15 U.S.C. 78q–1(a)(2)(A).

[14] 15 U.S.C. 78q–1(A)(2)(A).

[15] 15 U.S.C. 78q–1(b).

[16] 15 U.S.C. 78q–1(b)(3)(F).

[17] 17 CFR 240.17Ad–22(d)(4).

[18] 15 U.S.C. 78q–1(b)(3)(F).

[19] 17 CFR 240.17Ad–22(d)(4).

[20] OCC asserted that it is not aware of any exchange rules that specifically address dividend plays. According to OCC, the rules cited in the Duane Morris Letter concerning ''opening'' and ''closing'' transactions are relevant for many other purposes other than exercises, and, therefore, are not negated by the proposed rule change.

[21] 15 U.S.C. 78q–1(b)(3)(F).

[22] 17 CFR 240.17Ad–22(d)(4).

risks that are posed to itself. Rather, OCC notes its belief that it is fully within its statutory authority to address risks to clearing members that, although may not pose a material risk to OCC, may pose a risk to an individual clearing member that could have adverse effects on other clearing members, such as a sudden shift in a clearing member's market practices. While OCC concedes that dividend plays currently do not present a material risk to OCC, OCC maintained that this may not always be the case and that OCC's rules and by-laws do not limit the clearing of dividend plays to firms that are well-capitalized.

B. *The Proposed Rule Change Is Per Se Anticompetitive and Favors One Group of Brokers-Dealers Over Another Group of Broker-Dealers*

The Duane Morris Letter asserts that the proposed rule change is per se anticompetitive because it would only affect trading in market-maker accounts. The Duane Morris Letter contends that OCC's revision of its rules to preclude the acceptance of exercise notices on new long options positions on an intra-day basis would effectively nullify OCC Rule 801(c) solely for the accounts of market-makers.

In response, OCC contends that the proposed rule change is not intended to address competitive issues nor does it have the effect of eliminating or reducing competition. OCC states that all market-makers holding options positions established on national securities exchanges would be subject to the same processing sequence. Furthermore, according to OCC, a market-maker would still be able to participate in the capturing of a dividend, just like any other market participant that seeks to exercise a long in-the-money call option on the day prior to the ex-dividend date, so long as its long positions are not fully offset with short position at the end of the trading day.

C. The Proposed Rule Change is Per Se Anticompetitive and Favors Certain National Securities Exchanges Over Others

The Duane Morris Letter asserts that the purpose and intent of the proposed rule change is to reduce trade volume reported by NASDAQ OMX PHLX, so as to artificially increase the relative market share reported on other exchanges particularly the International Stock Exchange (''ISE'').

In response, OCC contends that this particular assertion is ''unsupported.'' OCC alleges that the composition of its Board of Directors, which is composed of two management directors, three public directors, nine clearing member directors and five exchange directors, makes it impossible that a limited number of exchanges, let alone one exchange, could have caused the proposal to be approved for an improper purpose. Additionally, OCC cites to the fact that various market participants through SIFMA encouraged OCC to initiate the inquiry into dividend plays.

D. The Proposed Rule Change Would Artificially Reduce Market Efficiency, Decrease Liquidity and Increase Volatility

The Duane Morris Letter asserts that market participants may have differing reasons, methodologies and strategies in connection with their options trading, which, according to Duane Morris, explains why occasionally the holder of an in-the-money call position will not exercise before the ex-dividend date. If OCC curtails dividend plays, Duane Morris contends, options pricing will become less stable and predictive, resulting in less liquidity and depth in the options market.[23] Duane Morris further contends that dividend plays serves a public purpose as it alerts public customers to the ex-dividend date and highlights the need for public customers to consider whether it is in their interests to adjust their positions.

In response, OCC contends that the proposed rule change is not targeting market participants based on whether or not they exercise call options. OCC characterizes the Duane Morris assertion concerning the proposal's effect on options pricing as ''speculation'' that is unlikely to match the actual outcome. The notion that dividend plays add liquidity and stability to the options market is, OCC notes, ''questionable at best'' since, according to OCC, the majority of these trades are prearranged between market makers and executed at the end of a trading day using a floor broker instead of an electronic system open to all market participants.

In addition, OCC disputes the Duane Morris assertion that dividend plays pose no harm public investors. OCC states that dividend plays are only profitable because the strategy results in a larger share of unassigned short positions being allocated away from market participants, including public investors, to dividend play traders. Furthermore, according to OCC, the timing (*i.e.,* end of trading day) and manner (*i.e.,* through a floor broker) in which dividend plays are executed cuts against Duane Morris's public purpose argument.

IV. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. [24] Section 17A (b)(3)(F) of the Exchange Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, to remove impediment to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and in general, to protect investors and the public interest.[25] Rule 17Ad–22(d) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, transparent and enforceable legal framework for each aspect of its activities in all relevant jurisdictions [26] and to identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures.[27]

After careful review of the proposal and the comment letters and the comment letters in response thereto, as described above and below, the Commission finds that OCC's rule change, as proposed, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, the Commission believes that OCC has the authority under the Exchange Act and the rules and regulations thereunder to adopt or amend existing rules to change its processing sequence to curtail or

[23] The Duane Morris Letter further claims that there is no underlying statutory basis for the proposal's net long requirement and market efficiency is not advanced by such a requirement. The Duane Morris Letter appears to base its claim on an alleged securities laws' requirement that an options holder must carry a net long position to act with respect to its position has been grounded in concerns of fraud and manipulation and that no harm is imposed on public investors by dividend play transactions. OCC characterizes this argument as a ''red herring.'' Moreover, OCC asserts that it is not relying on the narrow statutory basis that a market participant must be net long to take certain action, and that it has ample statutory authority under Section 17A(b)(3)(F) of the Exchange Act.

[24] 15 U.S.C. 78s(b)(2)(C).

[25] 15 U.S.C. 78q–1(b)(3)(F).

[26] 17 CFR. 240.17Ad–22(d)(1).

[27] 17 CFR 240.17Ad–22(d)(4).

eliminate the use of dividend plays in the accounts of market-makers in light of the identifiable improvements in the safety of its processes that are expected to result from the changes.

Through its internal governance process, OCC has determined that dividend play trades have the potential to pose certain risks to market participants, including OCC clearing members, and, in general, are not in the public interest. In making such a determination, OCC's proposed rule change will limit the use of dividend plays through the modification of the processing sequence by which these trades are cleared and settled at OCC. While the Commission acknowledges the point raised by Duane Morris and confirmed by OCC in its proposal, that dividend play trading does not present any current operational risk to OCC, the Commission believes that neither Section 17A of the Exchange Act nor Rule 17Ad–22 limit OCC to exclusively addressing risks that are currently present for the clearing agency alone. Given its important role in the national clearance and settlement system and its designation as a systemically important financial market utility by the Financial Stability Oversight Council in 2012, the Commission believes OCC is entitled under the Exchange Act to take into account the interests of its clearing members, as well as foreseeable effects of its actions on the financial system more generally, when reviewing and considering changes to its operational practices. There is a clearly articulated basis for believing the proposed action by OCC will improve the national clearance and settlement system by increasing the safety of the system in identifiable ways for at least a portion of OCC's membership as reflected in OCC's proposal and in the comment letters received, and the Commission believes such improvements are consistent with the relevant requirements of the Exchange Act. In particular, since the clearing of dividend play trades is not restricted based on clearing member capitalization and risk-management processes, the proposal serves to mitigate a foreseeable source of operational risk by precluding clearing members with less robust risk management processes from clearing such dividend trades in the future.

The Commission also finds that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the Exchange Act. The appropriate standard, as set forth in Section 17A(b)(3)(I) of the Exchange Act, requires that the rules of the clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act.[28] The Commission believes that the proposed rule change does not impose a burden on competition that is not necessary or appropriate in furtherance of minimizing potential sources of operational risk and promoting the prompt and accurate clearance and settlement of securities transactions. Moreover, since the majority of dividend plays occur in market-maker accounts, there is a reasonable basis for OCC to believe it is prudent risk management to start curtailing dividend play trading in the types of accounts in which it primarily occurs. Furthermore, the Commission notes that the proposed changes by OCC would not have the effects of ending dividend plays entirely for market-makers or any other participants in the options market. A market-maker, for example, will still have the ability to participate in the capturing of dividend after the operational changes proposed by OCC are in effect by exercising long in-the-money call options on the day prior to the ex-dividend date, so long as its position in the particular option is net long. While some consequential effects would necessarily follow from OCC implementing the proposed changes in its operational practices, absent action to eliminate dividend plays entirely, at this time the Commission believes OCC's choice to consider the beneficial effects of its operational changes outweigh any negative effects to be consistent with Section 17A(b)(3)(I) of the Exchange Act.[29]

Pursuant to Section 3(f) of the Exchange Act, in the review of a rule of a self-regulatory organization, the Commission shall consider whether the action will promote efficiency, competition, and capital formation.[30] As described above, Duane Morris argues that market efficiency is not advanced by the net long requirement for the processing of call options in Market-Maker accounts. Duane Morris appears to base its assertion on its belief that fraud and/or manipulation are not concerns with dividend play transactions, and that such trading imposes no harm to public investors. The Commission believes that Duane Morris has not provided ample evidence to support the assertion that the proposed rule change does not advance market efficiency.

[28] 15 U.S.C. 78q–1(b)(3)(I).

[29] Any additional proposed rule change by OCC expected to have the effect of eliminating the use of dividend play trades would also have to be presented to the Commission for consideration prior to taking effect. Points such as those made in the Duane Morris Letter regarding expected effects on competition and other consequences resulting from such a proposed change would necessarily be reconsidered by the Commission in light of the rationales presented by OCC at that time.

[30] 15 U.S.C. 78c(f).

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[31] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[32] that the proposed rule change (File No. SR–OCC–2014–15) be and hereby is *approved.*[33]

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[34]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–25879 Filed 10–30–14; 8:45 am]

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[31] 15 U.S.C. 78q–1.

[32] 15 U.S.C. 78s(b)(2).

[33] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73439; File No. SR–CBOE–2014–082]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the CBOE Trade Match System

October 27, 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 October 24, 2014, 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, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new rule related to its existing CBOE Trade Match System functionality. 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's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt new Rule 6.67 related to its existing CBOE Trade Match System (''CTM'') functionality. CTM is a systems user interface provided by the Exchange in which authorized Trading Permit Holders (''TPHs'') may receive copies of trade records and add and/or update their trade records. Although references to CTM exist within Regulatory and Information Circulars, as well as technical specifications, the functionality is not currently described in Exchange rules. The Exchange believes it would be beneficial to address and provide further detail in its rules regarding the CTM functionality and permitted uses.

Exchange rules currently contemplate post trade modifications.[3] Such modifications may be effected via the CTM system. A rule explicitly detailing the modification process and defining what permitted modifications are allowed however does not currently exist in the Exchange's rules. The Exchange believes it would be useful to explicitly reference within the rule text the term ''CTM'' and codify what post trade modifications via CTM are permitted to reduce confusion and add additional transparency to the rules regarding CBOE's systems.

First, the Exchange proposes to explicitly reference and describe ''CTM.'' Specifically, CTM is a system in which authorized TPHs may enter and report transactions that have been effected on the Exchange in accordance with Exchange rules (e.g., Cabinet Trades[4] or other trades that have been transacted on the Exchange in accordance with Exchange rules, but were not processed through the Hybrid System[5]) or to correct bona fide errors (e.g., a situation in which a transaction was reported using the wrong strike). Documentation requirements related to changes made through the use of CTM will be announced via a Regulatory Circular.

By way of background, CBOE Rule 6.51 requires that for all transactions made on the Exchange, TPHs must file with the Exchange certain trade information[6] in order to allow the Exchange to properly match and clear trades. This information is used to provide the comparison of the two sides (i.e., buy and sell) of a transaction. When the two sides match, the trade is successfully compared and will move on to the Options Clearing Corporation (''OCC'') for clearance. For trades that do not match (i.e., trade information from each side do not match) TPHs and their respective representatives must make reasonable efforts to resolve unmatched trades on trade day.[7] The Exchange notes that unmatched trades may be a result of software problems or systemic problems that cause incorrect information to be filed or a result of other errors such as ''key punch'' errors which result from manual data entry (i.e., trade information outside the written order instructions may have been mistakenly keyed in during user input). The Exchange notes that CTM may be used by TPHs to change certain fields on a trade record for which it has authority to correct, in order to update a trade record or correct an unmatched field to resolve an out-trade. The Exchange proposes to codify what post trade modifications via CTM are permitted and further specify which changes will require notification to the Exchange.

The Exchange first seeks to specify which fields may be changed by TPHs through the use of CTM without notice to the Exchange. Those fields are: (1) Executing Firm and Contra Firm; (2) Executing Broker and Contra Broker; (3) CMTA;[8] (4) Market-Maker Account and Sub Account; (5) Customer ID; (6) Position Effect (open/close); (7) Optional Data and/or (8) Origin Code (provided the change is not from a customer origin code to any other origin code). The Exchange notes that the information contained in these fields does not affect the terms of a contract or the Consolidated Tape. Rather, the Exchange views these changes to be non-critical backoffice changes and as such, the Exchange does not believe it needs notice from the TPH making the change. The Exchange also notes that such changes would be captured in the Exchange's audit trail.

Next, the Exchange proposes to specify which fields may be changed by TPHs through the use of CTM that require TPHs to give notice to the Exchange in a form and manner determined by the Exchange. Specifically, those fields are: (1) Series; (2) Quantity; (3) Buy or Sell; (4) Premium Price and/or (5) Origin Code (if changing origin code from customer (C) to any other origin code). The Exchange notes that these fields, with the exception of origin code, do change the terms of the contract and additionally affect the Consolidated Tape. As such, the Exchange proposes to require notice and further documentation as to why such a change is being made in order to monitor such changes, as well as take the necessary steps to ensure that any such changes are properly reflected in the Consolidated Tape. As to changes from a Customer (C) origin code to any other origin code, the Exchange notes that while such change does not affect the Consolidated Tape or terms of a

[3] *See, e.g.,* CBOE Rule 6.61 which provides that a Trading Permit Holder ''shall be obligated to reconcile all unmatched trades . . . and to report all reconciliations and corrections to the Exchange or the Clearing Trading Permit Holder responsible for submission to the Exchange.''

[4] *See* CBOE Rule 6.54.

[5] For example, a TPH may not have been able to enter its side of a transaction due to a system issue with the trade match record entry process.

[6] *See* CBOE Rule 6.51(d).

[7] *See* CBOE Rule 6.61. *See also,* CBOE Rule 6.60. On each business day the Exchange shall match the trade information submitted by TPHs on that day and issue Unmatched Trade Reports to each Clearing Trading Permit Holder, (''CTPH'') which contains a list of such CTPH's trades for that day which the Exchange did not receive matching trade data from another CTPH (called ''unmatched trades''). Upon receipt of an Unmatched Trade Report, a TPH must reconcile all unmatched trades and report all reconciliations and corrections to the Exchange or the CTPH responsible for submission to the Exchange.

[8] Under a Clearing Member Trade Agreement (''CMTA''), an Options Clearing Corporation (''OCC'') clearing member (''carrying clearing member'') authorizes another clearing member (''executing clearing member'') to give up the name of the carrying clearing member with respect to any trade executed on a specific exchange (i.e., the re-assignment of a trade to a different Clearing firm occurs post-trade at the OCC).

contract, such changes may affect other substantive aspects of how a trade was processed, including whether a trade should have been given order priority. Accordingly, the Exchange believes that TPHs making changes to these fields should be required to provide to the Exchange notice and documentation relating to the change. The Exchange proposes to require that notification of the change be made as soon as practicable, but no later than fifteen (15) minutes after the change has been made. The Exchange notes that it will not be authorizing any changes prior to the TPH making changes to any of the above-mentioned fields (i.e., the Exchange will not expressly indicate whether or not a change identified in a TPH's notice is in conformity with Exchange rules prior to the change being made). Rather, due to inherent time constraints, such changes will be reviewed by Exchange personnel after the fact, and a TPH that is found to have made an improper modification may be subject to appropriate disciplinary action in accordance with the Rules of the Exchange as described more fully below.

The Exchange lastly proposes to adopt Interpretation and Policy .01 to provide that any action taken by the Exchange pursuant to proposed Rule 6.67(b) and (c) does not constitute a determination by the Exchange that the transaction was effected in conformity with Exchange Rules.[9] As noted above, any improper change made through CTM shall be processed and given effect, but the TPH may be subject to appropriate disciplinary action in accordance with Exchange rules. Additionally, the Exchange notes that nothing in proposed Rule 6.67 is intended to define or limit the ability of the Exchange to sanction or take other remedial action pursuant to other Exchange rules for rule violations or other activity for which remedial measures may be proposed. The Exchange notes that given the inherent time constraints in making various changes to exchange transactions, the Exchange would not be able to adequately consider the above-mentioned requirements and make a determination within the time required as to whether a change was improper or not. As such the Exchange will not prevent any changes from being processed and given effect, but will review such changes after the fact to ensure compliance with Exchange rules.

2. Statutory Basis

The Exchange believes the proposed rule change is 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.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [11] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [12] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange views CTM as an important tool that allows TPHs to receive copies of trade records and add and/or update trade records. Specifically, as described above, Exchange rules contemplate post trade modifications and also require that TPHs resolve unmatched trades. The Exchange believes CTM provides TPHs an effective mechanism to make such changes and reconcile out-trades due to bona fide errors, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and protecting investors and the public interest. Additionally, CTM provides a mechanism to enter trade records for trades effected on the Exchange in accordance with Exchange rules, but that were not processed through the Hybrid System and would otherwise be processed outside of CBOE's systems.

The Exchange also believes that clearly defining in the rules existing system functionality (i.e., CTM) provides additional transparency in the rules and provides market participants an additional avenue to easily understand the system and processes CBOE offers. The Exchange believes additional transparency removes a potential impediment to and perfecting the mechanism for a free and open market and a national market system, and, in general, protecting investors and the public interest. Additionally, the Exchange believes that requiring certain changes made through the CTM system allows the Exchange to receive from TPHs information in a uniform format, which aids the Exchange's efforts to monitor and regulate CBOE's markets and TPHs and helps prevent fraudulent and manipulative practices.

Finally, the Exchange believes that the proposed rule changes are designed to not permit unfair discrimination among market participants. For example all TPHs may request access to CTM. Additionally, all TPHs will be subject to the same limitations as to the permitted uses of CTM functionality.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that proposed Rule 6.67 will promote competition by making the CTM functionality more understandable to users and the general public. The Exchange believes that by better explaining its CTM functionality to TPHs and codifying the permitted uses of CTM, TPHs will better understand the Exchange's systems. The Exchange believes that additional clarity and transparency in the Rules will make it easier for market participants to compete with one another on equal footing in the markets and ultimately benefits all investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) [14] thereunder. At any time within 60 days

[9] For example, if the Exchange provides a TPH the ability to make a change via CTM, such action should not be construed as a determination by the Exchange that the transaction proposed is in conformity with Exchange Rules.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *Id.*

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

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 will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2014–082 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–2014–082. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2014–082, and should be submitted on or before November 21, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–25880 Filed 10–30–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73433; File No. SR–NYSEArca–2014–122]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Use of Derivative Instruments by the AdvisorShares Global Echo ETF

October 27, 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 October 23, 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 to reflect a change to the means of achieving the investment objective applicable to the AdvisorShares Global Echo ETF (''The Fund'') relating to its use of derivative instruments. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has approved listing and trading on the Exchange of shares (''Shares'') of the Fund under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange.[4] The Shares are offered by AdvisorShares Trust (''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[5]

The investment adviser to the Fund is AdvisorShares Investments, LLC (''Adviser''). The Fund's sub-advisers (''Sub-Advisers'' and each a ''Sub-Adviser''), which provide day-to-day portfolio management of the Fund, are First Affirmative Financial Network LLC; Reynders, McVeigh Capital Management, LLC; Baldwin Brothers Inc.; and Community Capital Management Inc.

In this proposed rule change, the Exchange proposes to change the description of the Fund's use of

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Commission originally approved the listing and trading of the Shares on the Exchange on May 16, 2012. *See* Securities Exchange Act Release No. 67003 (May 16, 2012), 77 FR 30345 (May 22, 2012) (SR–NYSEArca–2012–24) (''Prior Order''). *See also* Securities Exchange Act Release No. 66696 (March 30, 2012), 77 FR 20660 (April 5, 2012) (SR–NYSEArca–2012–24) (''Prior Notice'').

[5] The Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act''). On July 15, 2011, the Trust filed with the Commission Post-Effective Amendment No. 32 to Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333–157876 and 811–22110) (''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 29291 (May 28, 2010) (File No. 812–13677) (''Exemptive Order'').

derivative instruments, as described below.[6]

On December 6, 2012, the staff of the Commission's Division of Investment Management (''Division'') issued a no-action letter (''No-Action Letter'') relating to the use of derivatives by actively-managed exchange-traded funds (''ETFs'').[7] The No-Action Letter noted that, in March of 2010, the Commission announced in a press release that the staff was conducting a review to evaluate the use of derivatives by mutual funds, ETFs, and other investment companies and that, pending completion of this review, the staff would defer consideration of exemptive requests under the 1940 Act relating to, among others, actively-managed ETFs that would make significant investments in derivatives.

The No-Action Letter stated that the Division staff will no longer defer consideration of exemptive requests under the 1940 Act relating to actively-managed ETFs that make use of derivatives provided that they include representations to address some of the concerns expressed in the Commission's March 2010 press release. These representations are: (i) That the ETF's board periodically will review and approve the ETF's use of derivatives and how the ETF's investment adviser assesses and manages risk with respect to the ETF's use of derivatives; and (ii) that the ETF's disclosure of its use of derivatives in its offering documents and periodic reports is consistent with relevant Commission and staff guidance (together, the ''No-Action Letter Representations''). The No-Action Letter stated that the Division would not recommend enforcement action to the Commission under sections 2(a)(32), 5(a)(1), 17(a), 22(d), and 22(e) of the 1940 Act, or rule 22c–1 under the 1940 Act if actively-managed ETFs operating in reliance on specified orders (which include the Trust's Exemptive Order [8]) invest in options contracts, futures contracts or swap agreements provided that they comply with the No-Action Letter Representations.[9]

The Prior Notice included the following representation: ''Further, in accordance with the Exemptive Order, the Fund will not invest in options, futures, or swaps.'' (the ''Derivatives Representation''). In view of the No-Action Letter, the Exchange is proposing to delete the Derivatives Representation. The Exchange now proposes that, to pursue the Fund's investment objective, the Fund be permitted to invest in options, futures, and forward contracts (''Derivative Instruments''), as described below.

Going forward, the Fund may buy and sell futures contracts and options on futures contracts. The Fund will only enter into futures contracts and options on futures contracts that are traded on a national futures exchange that is regulated by the Commodities Futures Trading Commission (''CFTC'') and that is a member of the Intermarket Surveillance Group (''ISG'').[10] With respect to the Fund's investments in futures contracts and options on futures contracts, the Fund may buy and sell only index futures contracts and options on futures contracts with respect to any index on which futures or options on futures are traded on a U.S. futures exchange. The Fund may use such index futures contracts and related options on futures contracts for bona fide hedging; attempting to offset changes in the value of securities held or expected to be acquired or be disposed of; attempting to gain exposure to a particular market, index or instrument; or other risk management purposes.

The Fund may invest in exchange-traded put and call options on securities indices and currencies. The Fund may purchase and write options only if such options are traded on a U.S. national securities exchange.

The Fund may invest in currency forwards.

Under normal market conditions, no more than 20% of the value of the Fund's net assets will be invested in Derivative Instruments.[11]

The Prior Notice stated that the Fund's investments would be consistent with the Fund's investment objective and would not be used to enhance leverage. In view of the Exchange's proposal to permit the Fund to use Derivative Instruments, the Fund's investments in Derivative Instruments could potentially be used to enhance leverage. However, the Fund's investments in Derivative Instruments will be consistent with the Fund's investment objective and will not be used to seek to achieve a multiple or inverse multiple of an index.

Investments in Derivative Instruments will be made in accordance with the 1940 Act and consistent with the Fund's investment objective and policies. The Fund will comply with the regulatory requirements of the Commission to maintain assets as ''cover,'' maintain segregated accounts, and/or make margin payments when it takes positions in Derivative Instruments involving obligations to third parties (*i.e.,* instruments other than purchase options). If the applicable guidelines prescribed under the 1940 Act so require, the Fund will earmark or set aside cash, U.S. government securities, high grade liquid debt securities and/or other liquid assets permitted by the Commission in a segregated custodial account in the amount prescribed.[12]

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[6] The Adviser represents that the Adviser and the Sub-Advisers have managed and will continue to manage the Fund in the manner described in the Prior Notice, and will not implement the changes described herein until the instant proposed rule change is operative.

[7] *See* No-Action Letter dated December 6, 2012 from Elizabeth G. Osterman, Associate Director, Office of Exemptive Applications, Division of Investment Management.

[8] *See supra,* note 5.

[9] The Adviser acknowledges that for the Fund to rely on the No-Action Letter, the Fund must comply with the No-Action Letter Representations. In this regard, (i) the Board of Trustees of the Trust will periodically review and approve the Fund's use of derivatives and how the Adviser assesses and manages risk with respect to the Fund's use of derivatives and (ii) the Fund's disclosure of its use of derivatives in its offering documents and periodic reports will be consistent with relevant Commission and staff guidance.

[10] To the extent the Fund invests in futures, options on futures or other instruments subject to regulation by the CFTC, it will do so in reliance on and in compliance with CFTC regulations in effect from time to time and in accordance with the Fund's policies. The Trust, on behalf of certain of its series, has filed a notice of eligibility for exclusion from the definition of the term ''commodity pool operator'' in accordance with CFTC Regulation 4.5. Therefore, neither the Trust nor the Fund is deemed to be a ''commodity pool'' or ''commodity pool operator'' with respect to the Fund under the Commodity Exchange Act (''CEA''), and they are not subject to registration or regulation as such under the CEA. In addition, as of the date of this filing, the Adviser is not deemed to be a ''commodity pool operator'' or ''commodity trading adviser'' with respect to the advisory services it provides to the Fund. The CFTC recently adopted amendments to CFTC Regulation 4.5 and has proposed additional regulatory requirements that may affect the extent to which the Fund invests in instruments that are subject to regulation by the CFTC and impose additional regulatory obligations on the Fund and the Adviser. The Fund reserves the right to engage in transactions involving futures and options thereon to the extent allowed by CFTC regulations in effect from time to time and in accordance with the Fund's policies.

[11] The Fund will limit its direct investments in futures to the extent necessary for the Adviser to claim the exclusion from regulation as a ''commodity pool operator'' with respect to the Fund under Rule 4.5 promulgated by the CFTC, as such rule may be amended from time to time. Under Rule 4.5 as currently in effect, the Fund will limit its trading activity in futures and options on futures (excluding activity for ''bona fide hedging purposes,'' as defined by the CFTC) such that it will meet one of the following tests: (i) Aggregate initial margin and premiums required to establish its futures and options on futures will not exceed 5% of the liquidation value of the Fund's portfolio, after taking into account unrealized profits and losses on such positions; or (ii) aggregate net notional value of its futures and options on futures will not exceed 100% of the liquidation value of the Fund's portfolio, after taking into account unrealized profits and losses on such positions.

[12] With respect to guidance under the 1940 Act, *see* 15 U.S.C. 80a–18; Investment Company Act Release No. 10666 (April 18, 1979), 44 FR 25128

The Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of the Fund, including the Fund's use of Derivative Instruments, may give rise to leverage, causing the Fund to be more volatile than if it had not been leveraged.[13]

Based on the above, the Exchange seeks this modification regarding the Fund's use of Derivative Instruments. The Adviser represents that there is no change to the Fund's investment objective. The Adviser and the Sub-Advisers believe that the ability to invest in Derivative Instruments will provide the Adviser and Sub-Advisers with additional flexibility to meet the Fund's investment objective.

The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

Except for the changes noted herein, all other facts presented and representations made in the Rule 19b–4 filing underlying the Prior Order remain unchanged.

The changes described herein will be effective upon (i) the effectiveness of an amendment to the Trust's Registration Statement disclosing the Fund's intended use of Derivative Instruments and (ii) when this proposed rule change has become operative. The Adviser represents that the Adviser and Sub-Advisers have managed and will continue to manage the Fund in the manner described in the Prior Notice, and will not implement the changes described herein until this proposed rule change is operative.

Impact on Arbitrage Mechanism

The Adviser believes there will be minimal, if any, impact to the arbitrage mechanism as a result of the use of derivatives. Market makers and participants should be able to value derivatives as long as the positions are disclosed with relevant information. The Adviser believes that the price at which Shares trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem Creation Units (as defined in the Prior Notice) at their net asset value (''NAV''), which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

The Adviser does not believe there will be any significant impacts to the settlement or operational aspects of the Fund's arbitrage mechanism due to the use of derivatives. Certain derivatives may not be eligible for in-kind transfer, and such derivatives will be substituted with a ''cash in lieu'' amount when the Fund processes purchases or redemptions of Creation Units (as defined in the Prior Notice) in-kind.

Valuation for Purposes of Calculating Net Asset Value

As stated in the Prior Notice, the NAV per Share of the Fund is computed by dividing the value of the net assets of the Fund (*i.e.,* the value of its total assets less total liabilities) by the total number of Shares of the Fund outstanding, rounded to the nearest cent. Expenses and fees, including without limitation, the management, administration, and distribution fees, are accrued daily and taken into account for purposes of determining NAV. The NAV per Share for the Fund is calculated by the Administrator (The Bank of New York Mellon Corporation) and determined as of the close of the regular trading session on the New York Stock Exchange (''NYSE'') (ordinarily 4:00 p.m., E.T.) on each day that the NYSE is open.

U.S. exchange-traded options will be valued at the closing price determined by the applicable exchange. The Fund will generally value exchange-traded futures at the settlement price determined by the applicable exchange. Currency forward contracts will normally be valued on the basis of quotes obtained from a third party broker-dealer who makes markets in such securities or on the basis of quotes obtained from an independent third-party pricing service.

Availability of Information

As described in the Prior Notice, on each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund discloses on its Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day. *See* ''Disclosed Portfolio'' below.

Pricing information for Derivative Instruments will be available from major broker-dealer firms, subscription services, and/or pricing services and, in addition, for exchange-traded Derivative Instruments, from the exchanges on which they are traded.

Intra-day and closing price information regarding exchange traded options (including options on futures) and futures will be available from the exchange on which such instruments are traded. Quotation and last sale information for exchange-traded options cleared via the Options Clearing Corporation is available from the Options Price Reporting Authority.

Disclosed Portfolio

The Fund's disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday. On a daily basis, the Fund will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''FINRA'') on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[14] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

(April 27, 1979); *Dreyfus Strategic Investing,* Commission No-Action Letter (June 22, 1987); *Merrill Lynch Asset Management, L.P.*, Commission No-Action Letter (July 2, 1996).

[13] To mitigate leveraging risk, the Fund will segregate or ''earmark'' liquid assets or otherwise cover the transactions that may give rise to such risk.

[14] FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, exchange-traded options, exchange-traded futures and exchange-traded options on futures with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, exchange-traded options, exchange-traded futures and exchange-traded options on futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, exchange-traded options, exchange-traded futures and exchange-traded options on futures, from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[15]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[16] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, 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.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that, under normal market conditions, no more than 20% of the value of the Fund's net assets will be invested in Derivative Instruments. The Fund's investments in Derivative Instruments will be consistent with the Fund's investment objective and will not be used to seek to achieve a multiple or inverse multiple of an index. Investments in Derivative Instruments will be made in accordance with the 1940 Act and consistent with the Fund's investment objective and policies. The Fund will comply with the regulatory requirements of the Commission to maintain assets as ''cover,'' maintain segregated accounts, and/or make margin payments when it takes positions in Derivative Instruments involving obligations to third parties (*i.e.,* instruments other than purchase options). If the applicable guidelines prescribed under the 1940 Act so require, the Fund will earmark or set aside cash, U.S. government securities, high grade liquid debt securities and/or other liquid assets permitted by the Commission in a segregated custodial account in the amount prescribed. Moreover, the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Fund's disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday. On a daily basis, the Fund will disclose on the Fund's Web site specific information regarding each portfolio holding, as applicable to the type of holding. The Fund may use futures contracts and related options for bona fide hedging; attempting to offset changes in the value of securities held or expected to be acquired or be disposed of; attempting to gain exposure to a particular market, index or instrument; or other risk management purposes. In addition, such proposed change will provide the Adviser and Sub-Advisers with additional flexibility in meeting the Fund's investment objective. The Adviser does not believe there will be any significant impacts to the settlement or operational aspects of the Fund's arbitrage mechanism due to the use of derivatives. In addition, the Commission has previously approved the use of derivatives similar to those proposed herein by issues of Managed Fund Shares traded on the Exchange.[17] Consistent with the Prior Notice, NAV will continue to be calculated daily and the NAV and Disclosed Portfolio (as defined in NYSE Arca Equities Rule 8.600(c)(2)) will be made available to all market participants at the same time.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted, the additional flexibility to be afforded to the Adviser and Sub-Advisers by permitting the Fund to invest in Derivative Instruments under the proposed rule change is intended to enhance the Adviser's and Sub-Advisers' ability to meet the Fund's investment objective. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, exchange-traded options, exchange-traded futures and exchange-traded options on futures with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, exchange-traded options, exchange-traded futures and exchange-traded options on futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, exchange-traded options, exchange-traded futures and exchange-traded options on futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, as indicated in the Prior Notice, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value (as defined in NYSE Arca Equities Rule 8.600(d)(2)(A)), the Disclosed Portfolio, and quotation and last sale information for the Shares. Consistent with the No-Action Letter, (i) the Board of Trustees of the Trust will periodically review and approve the Fund's use of derivatives and how the Adviser assesses and manages risk with respect to the Fund's use of derivatives and (ii) the Fund's disclosure of its use of derivatives in its offering documents and periodic reports will be consistent with relevant Commission and staff guidance.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change will permit the Adviser and Sub-Advisers additional flexibility in achieving the Fund's investment objective, thereby offering investors additional investment options.

[15] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[16] 15 U.S.C. 78f(b)(5).

[17] *See, e.g.,* Securities Exchange Act Release Nos. 73081 (September 11, 2014), 79 FR 55859 (September 17, 2014) (SR–NYSEArca–2014–20) (order approving listing and trading on the Exchange of shares of the Reality Shares DIVS ETF under NYSE Arca Equities Rule 8.600); 72882 (August 20, 2014), 79 FR 50964 (August 26, 2014) (SR–NYSEArca–2014–58) (order approving listing and trading on the Exchange of shares of the PIMCO Short-Term Exchange-Traded Fund and the PIMCO Municipal Bond Exchange-Traded Fund under NYSE Arca Equities Rule 8.600).

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 foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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–NYSEArca–2014–122 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–2014–122. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2014–122 and should be submitted on or before November 21, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–25888 Filed 10–30–14; 8:45 am]

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[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73436; File No. SR–C2–2014–024]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Complex Order Book

October 27, 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 October 15, 2014, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules related to the complex order book (''COB''). The text of the proposed rule change is provided below.

(additions are *italicized;* deletions are [bracketed])

* * * * *

C2 Options Exchange, Incorporated Rules

* * * * *

Rule 6.13. Complex Order Execution

(a)–(c) No change.

. . . Interpretations and Policies:

.01–.06 No change.

.07 Execution of Complex Orders on the COB Open:

(a) Complex orders, including stock-option orders, do not participate in opening rotations for individual component option series legs conducted pursuant to Rule 6.11. When the last of the individual component option series legs that make up a complex order strategy has opened (and, in the case of a stock-option order, the underlying stock has opened), the COB for that strategy will open. The COB will open with no trade, except as follows:

([a]*i*) The COB will open with a trade against the individual component option series legs if there are complex orders on only one side of the COB that are marketable against the opposite side of the derived net market. The resulting execution will occur at the derived net market price to the extent marketable *pursuant to the rules of trading priority otherwise applicable to incoming electronic orders in the individual component legs.* To the extent there is any remaining balance, the complex orders will *trade pursuant to subparagraph (ii) below or, if unable to trade,* be processed as they would on an intra-day basis under Rule 6.13. [(]This *sub*paragraph ([a]*i*) is not applicable to stock-option orders because stock-option orders do not trade against the individual component option series legs when the COB opens.[)]

([b]*ii*) The COB will open *(or continue to open with another trade if a trade occurred pursuant to subparagraph (i)*

above) with a trade against complex orders if there are complex orders in the COB *(including any remaining balance of an order that enters the COB after a partial trade with the legs pursuant to subparagraph (i))* that are marketable against each other and priced within the derived net market. The resulting execution will occur at a market clearing price that is inside the derived net market and that matches complex orders to the extent marketable *pursuant to the allocation algorithm from Rule 6.12, as determined by the Exchange on a class-by-class basis*[. In determining the priority,] *with the addition that* the COB gives priority to complex orders whose net price is better than the market clearing price first, and then to complex orders at the market clearing price. To the extent there is any remaining balance, the complex orders will be processed as they would on an intra-day basis under Rule 6.13. [(]This *sub*paragraph ([b]*ii*) is applicable to stock-option orders.[)]

([c]*b*) The ''derived net market'' for a stock-option order strategy will be calculated using the Exchange's best bid or offer in the individual option series leg(s) and the NBBO in the stock leg. The ''derived net market'' for any other complex order strategy will be calculated using the Exchange's best bid or offer in the individual option series legs.

(c) The Exchange may also use the process described in paragraph (a) of this Interpretation and Policy .07 when the COB reopens a strategy after a time period during which trading of that strategy was unavailable.

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules related its COB. Rule 6.13, Interpretation and Policy .07 describes how complex orders execute when the COB opens. Complex orders do not participate in the opening rotation for the individual leg series (which occurs pursuant to Rule 6.11). Rather, the COB for a complex order strategy will open when the last of the individual legs series that make up the strategy has opened (and, in the case of a stock-option order, when the underlying stock has opened). Under the current rules, the COB will open with no trade, except as follows:

- The COB will open with a trade against the individual component option series legs if there are complex orders on only one side of the COB that are marketable against the opposite side of the derived net market.[3] The resulting execution will occur at the derived net market price to the extent marketable. To the extent there is any remaining balance, the complex orders will be processed as they would on an intra-day basis under Rule 6.13.[4] This does not apply to stock-option orders, which cannot trade against the individual leg series when the COB opens.
- The COB will open with a trade against complex orders if there are complex orders in the COB that are marketable against each other and priced within the derived net market. The resulting execution will occur at a market clearing price that is inside the derived net market and that matches complex orders to the extent marketable. In determining the priority, the COB gives priority to complex orders whose net price is better than the market clearing price first, and then to complex orders at the market clearing price. To the extent there is any remaining balance, the complex orders will be processed as they would on an intra-day basis under Rule 6.13.[5] This applies to stock-option orders.

The proposed rule change adds to current paragraph (b) of Interpretation and Policy .07[6] that the Exchange may determine, on a class-by-class basis, which allocation algorithm from Rule 6.12[7] will apply to complex order trades on the COB open pursuant to current paragraph (b) (proposed paragraph (a)(ii)).[8] The Exchange may determine on a class-by-class basis which allocation algorithm from Rule 6.12 will apply to executions to opening rotations.[9] This opening allocation algorithm may be different than the intraday allocation algorithm. The proposed rule change provides the Exchange with the same flexibility with respect to executions of complex orders on the COB open. While Rule 6.13, Interpretation and Policy .05 provides the Exchange with the flexibility to determine on a class-by-class basis which allocation algorithm from Rule 6.12 will apply to COB executions (in lieu of the algorithm specified in Rule 6.12(b)(1)(B)),[10] Interpretation and Policy .07 does not state that the applicable allocation algorithm for complex order executions on the COB open may be different than the intraday allocation algorithm for the COB. The proposed rule change adds this detail to the rules and allows the Exchange to determine on a class-by-class basis which allocation algorithm will apply to

[3] The ''derived net market'' is calculated based on the Exchange's best bid or offer (''BBO'') in the individual series legs. For stock-option orders, the derived net market is calculated based on the BBO in the individual option series leg(s) and the national best bid or offer (''NBBO'') in the stock leg. *See* Rule 6.13, Interpretation and Policy .07(c) (which this rule filing proposes to change to paragraph (b)).

[4] Pursuant to Rule 13, complex orders may either enter the COB or process through a complex order auction (COA).

[5] *Id.*

[6] The proposed rule change reorganizes Interpretation and Policy .07. This proposed language appears in proposed paragraph (a)(ii) (current paragraph (b)), which is the paragraph related to trades of complex orders on the COB at the open.

[7] The allocation algorithms include price-time, pro-rata, and price-time with primary public customer priority and secondary trade participation right priority base priorities and a combination of various optional priority overlays pertaining to public customer priority, Market-Maker participation entitlements, small order preference and market turner. *See* Rule 6.12.

[8] The proposed rule change also adds to current paragraph (a) (proposed paragraph (a)(i)) that executions of complex orders against the individual legs will be pursuant to the rules of trading priority otherwise applicable to incoming electronic orders in the individual component legs. The current rule is silent on what allocation algorithm applies to executions of complex orders on the COB against the individual legs. The Exchange believes the proposed rule text merely eliminates any potential confusion regarding how complex orders will be allocated in accordance with proposed paragraph (a)(i).

[9] *See* Rule 6.11, Interpretation and Policy .01.

[10] Rule 6.13(b)(1) states that complex orders submitted to the COB may trade as follows: (a) A complex order in the COB will automatically execute against individual quotes and orders on the book provided the complex order can be executed in full or in a permissible ratio by the orders and quotes in the book; or (b) complex orders in the COB that are marketable against each other will automatically execute, and the allocation of complex orders within the COB will be pursuant to the rules of trading priority otherwise applicable to incoming orders in the individual component legs.

complex order trades on the COB open, which may be different than the allocation algorithm applicable to intraday complex order trades on the COB.[11] The Exchange will announce any allocation algorithm determinations via Regulatory Circular.[12]

The Exchange is not proposing to adopt any new allocation algorithms or priority rules nor is it proposing to modify the COB opening process.[13] Rather, it is adding detail to the Exchange rule regarding the COB opening process and providing the Exchange with flexibility to choose an algorithm from among the existing algorithms that will apply to complex order trades on the COB open, rather than simply defaulting to the algorithm in effect for intraday trading on the COB in that class. The Exchange believes this flexibility is consistent with its other rules regarding the determination of allocation algorithms and will further promote fair and orderly openings of strategies on the COB.[14]

The proposed rule change also adds detail to proposed paragraph (a)(ii) regarding which trades on the COB are deemed to be part of the opening of the COB (and thus subject to the allocation algorithm in place for the COB open). To the extent a complex order partially trades with the leg series on the COB open, and the remaining balance enters the COB (pursuant to Rule 6.13) as set forth in proposed subparagraph (a)(i), if that remaining balance is marketable against another complex order on the COB at the open, those orders will execute as set forth in proposed subparagraph (a)(ii). Thus, any execution of that remaining balance on the COB is considered an execution at the COB open, as the open is intended to cause any marketable complex orders to trade, and thus subject to proposed subparagraph (a)(ii) (current paragraph (b)). The proposed rule change makes a corresponding change to proposed paragraph (a)(i) to provide that any remaining balance may trade pursuant to proposed paragraph (a)(ii) (if unable to trade, it will be processed as it would on an intra-day basis). The proposed rule change also makes a corresponding change to proposed paragraph (a)(ii) to provide that the COB will open, or continue to open, with a trade of complex orders on the COB, as the COB opening may already have been initiated by a trade pursuant to paragraph (a)(i).

For example, suppose Complex Order X is an order to buy 20 Series A and 20 Series B for a net price of $2.40 and on the COB at the open. If the market for Series A is $1.00—$1.20 and the market for Series B is $1.00—$1.20 (for a net price of $2.00—$2.40), with the offer to sell at $2.40 for 10 contracts, then when the COB opens, 10 contracts of Complex Order X will trade against the 10 contracts in the leg markets. The remaining balance of 10 of Complex Order X then enters the COB pursuant to Rule 6.13(b). If Complex Order Y to sell 10 Series A and 10 Series B at $2.40 is on the COB at the open, then the remaining balance of Complex Order X will trade against Complex Order Y. This trade of Complex Order X against Complex Order Y is part of the COB open. If there were multiple complex orders at the same price, they would allocate in accordance with the algorithm in place for the COB open.

The Exchange believes that the rule text is currently unclear as to whether any remaining balance from proposed subparagraph (a)(i) enters the COB and is marketable against the COB would trade in accordance with COB open or COB intraday rules. Currently, if the remaining balance is marketable against other complex orders in the COB, the System will execute the remaining balance against orders in the COB as part of the COB open (and thus in accordance with the opening matching algorithm). Generally, the ''opening'' includes all trades that would ''clear'' the market.[15] The proposed rule change is consistent with this idea and adds this detail to proposed subparagraph (a)(ii) to codify the intent of the current rule.

In addition, the proposed rule change adds paragraph (c) to Interpretation and Policy .07, which states that the Exchange may use the process described in paragraph (a) when the COB reopens a strategy after a time period during which trading of that strategy was unavailable pursuant to the rules. The Exchange may use the opening rotation process to reopen a class after a trading halt.[16] The proposed rule change provides the Exchange with the same flexibility with respect to reopening the COB. Trading of strategies may be unavailable on the COB, for example, if there is a trading halt in the underlying security or if trading on the COB is ''on hold'' because the derived net market is outside of price check parameters set by the Exchange to prevent extreme executions.[17] The Exchange uses the opening rotation process to reopen after a trading halt to provide for an orderly reopening, and the Exchange would similarly like to provide for a fair and orderly reopening of the COB after any period during which COB trading was unavailable.

The proposed rule change also makes nonsubstantive, technical changes to Interpretation and Policy .07, including adding and modifying subparagraph lettering and numbering, indenting subparagraphs, and deleting unnecessary parentheticals.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[18] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[19] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[20] requirement that the rules of an exchange not be designed

[11] Currently, complex orders that execute against the COB (proposed subparagraph (a)(ii)) allocate pursuant to price-time.

[12] *See* Rule 6.13, Interpretation and Policy .01 (which states that the Exchange will announce to Trading Permit Holders via Regulatory Circular all pronouncements regarding determinations by the Exchange pursuant to Rule 6.13).

[13] The Exchange represents that complex orders continue to have opportunities to trade against the leg markets, both at the open pursuant to proposed paragraph (a)(i) and intraday pursuant to Rule 6.13(b) (execution of orders in the COB) and (c) (execution of orders through COA). Additionally, this filing does not change the complex order priority principles (including public customer priority) set forth in Rules 6.12 and 6.13.

[14] Additionally, because Rules 6.11, Interpretation and Policy .01, 6.12 and 6.13, Interpretation and Policy .05 provide the Exchange with flexibility to determine allocation algorithms on a class-by-class basis, the Exchange believes it is appropriate to provide the same class-by-class flexibility to trading at the COB open.

[15] *See* Rule 6.11 regarding the opening of series at a market-clearing price and Rule 6.13, Interpretation and Policy .07(b) regarding the opening of the COB at a market-clearing price.

[16] *See* Rule 6.11(i).

[17] *See* Rule 6.13, Interpretation and Policy .04. For example, pursuant to paragraph (a)(3), if the BBO or derived net market is not within an acceptable price range, the System holds marketable limit orders and does not allow trading of complex orders for that strategy until the market is no longer outside the applicable price range.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] *Id.*

to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change adds detail to its rules regarding the opening of trading on its COB, which benefits investors. The Exchange believes the flexibility provided by the proposed rule change is consistent with its other rules. The Exchange already has flexibility to apply a different allocation algorithm at the open of trading of simple orders and to use its opening procedure after a trading halt for simple orders.[21] It also already has the flexibility to apply a different allocation algorithm to complex order executions on the COB.[22] The Exchange is merely extending this flexibility to the opening and reopening of trading of complex orders on the COB. The Exchange notes that the level of trading activity is often different at the open than during the trading day. To ensure a fair and orderly opening in light of this trading activity, rules often allow the Exchange to apply them in a different manner to the opening of trading (such as different bid-ask differential requirements, different price reasonability checks and different allocation algorithms). The Exchange believes extending similar flexibility to the opening of complex order trading on the Exchange will allow it to similarly ensure a fair and orderly COB open, which protects investors and promotes just and equitable principles of trade.

The proposed rule change that specifies that the remaining balance of a complex order that partially trades with the individual leg series may be executed as part of the COB open provision, and that the COB open may include both trades of complex orders with the legs and with other complex orders, further benefits investors and promotes an open market by adding detail to the rules regarding how the System treats this remaining balance. Openings generally include a series of trades in order to execute all orders that are marketable upon the open, and the Exchange believes the proposed rule change is consistent with that idea.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change applies to all complex order trading on the COB when it opens or reopens. In addition, the proposed rule change applies only to the COB opening process on the Exchange. Its purpose is to include the COB opening procedure that is currently in place on the Exchange, which procedure is designed to open complex order strategies on the Exchange in a fair and orderly manner. The proposed rule change does not help C2 market participants to the detriment of market participants on other exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[23] and Rule 19b–4(f)(6)[24] thereunder. 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 will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2014–024 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– C2–2014–024. 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR– C2–2014–024, and should be submitted on or before November 21, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–25878 Filed 10–30–14; 8:45 am]

BILLING CODE 8011–01–P

[21] *See* Rule 6.11(i) (use of opening procedures after a trading halt) and Interpretation and Policy .01 (determination of allocation algorithm on a class-by-class basis during opening rotations, which may be different than allocation algorithm for intraday trading).

[22] *See* Rule 6.13, Interpretation and Policy .05.

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73440; File No. SR–ISE–2014–48]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Schedule of Fees

October 27, 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 October 15, 2014, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to adopt a limited waiver of PrecISE fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.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 these statements may be examined at the places specified in Item IV below. 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 purpose of the proposed rule change is to amend the Schedule of Fees to adopt a limited waiver of PrecISE Trade® (''PrecISE'') fees for Electronic Access Members (''EAMs'') and sponsored customers that execute a high volume of Crossing Orders in a given month.[3] The Exchange designates this filing to become effective on October 16, 2014.[4]

PrecISE is the Exchange's proprietary front-end order routing terminal used by EAMs and/or their sponsored customers to send order flow to ISE.[5] The Exchange charges EAMs and sponsored customers that use PrecISE a monthly fee of $350 per user for the first 10 users, and $100 per user for each subsequent user. To give new users time to become familiar and fully acclimated with all of the functionality that PrecISE offers, and as an incentive to encourage firms to use PrecISE, the Exchange currently waives these PrecISE fees for the first two months for all new users.[6] The Exchange now proposes to introduce a further incentive for firms to try PrecISE that is tied to Crossing Order volume, which comprises a significant portion of volume traded via PrecISE. Specifically, the Exchange proposes to waive the PrecISE fees described above for an EAM or sponsored customer's first five (5) users if that EAM or sponsored customer executes a minimum of 1.5 million crossing contracts during the prior calendar month.[7] For the first billing cycle that this waiver is effective only,[8] the Exchange proposes to waive these fees based on a prorated volume threshold of 750,000 crossing contracts executed in the period beginning on the effective date of this filing and ending on October 31, 2014. For firms that find the PrecISE functionality useful, and choose to purchase additional terminals above the free ones offered here, the free terminals will count towards the first 10 users otherwise subject to the higher $350 per user fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and Section 6(b)(4) of the Act,[10] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposed fee change is reasonable and equitable as it will give firms with a high volume of Crossing Orders the opportunity to properly evaluate PrecISE over an indefinite period. While PrecISE is not limited to Crossing Orders, this volume accounts for a significant portion of PrecISE use today. As such, the Exchange believes that providing free terminals to firms that submit a substantial volume of Crossing Order flow will encourage those firms to purchase additional paid terminals to support their trading needs. The proposed fee waiver will also act as an inducement for firms that wish to use PrecISE to bring additional Crossing Order volume to the Exchange in order to qualify for the free terminals. The Exchange notes that it is adopting a prorated crossing volume threshold for the first billing cycle, as the proposed fee change would become effective during the middle of a calendar month, and would therefore only include volume from half of that month. Furthermore, the Exchange believes that the proposed fee change is not unfairly discriminatory as all firms that meet the crossing volume threshold, including EAMs and sponsored customers that already use PrecISE for trading and those who are trying PrecISE for the first time, will be eligible to receive the free PrecISE terminals.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[11] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the proposed fee change offers a competitive incentive for firms to bring Crossing Order flow to the ISE and migrate to the Exchange's front-end order routing terminal. The Exchange operates in a highly competitive market

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Crossing Orders include Qualified Contingent Cross orders and orders executed in the Facilitation, Solicitation, Price Improvement, or Block Order Mechanisms.

[4] PrecISE fees are billed based on a billing period that begins on the 16th of the month and ends on the 15th of the following month. The first billing period subject to the proposed fee waiver would begin on October 16, 2014 and end on November 15, 2014.

[5] A ''sponsored customer'' is a non-member that trades under a sponsoring member's execution and clearing identity. *See* Securities Exchange Act Release No. 55586 (April 5, 2007), 72 FR 18701 (April 13, 2007) (SR–ISE–2007–19). Market Makers must connect to the Exchange via API and are therefore not eligible to use PrecISE.

[6] *See* Securities Exchange Act Release No. 62053 (May 6, 2010), 75 FR 27033 (May 13, 2010) (SR–ISE–2010–35).

[7] For example, PrecISE fees will be waived based on the full November crossing volume for the November 16, 2014 to December 15, 2014 billing cycle.

[8] *See* note 4 supra.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78f(b)(8).

in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [12] and subparagraph (f)(2) of Rule 19b–4 thereunder,[13] because it establishes a due, fee, or other charge imposed by ISE.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings 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 No. SR–ISE–2014–48 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–ISE–2014–48. 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 ISE. 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–ISE–2014–48 and should be submitted by November 21, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–25881 Filed 10–30–14; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73435; File No. SR–CBOE–2014–071]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Complex Order Book

October 27, 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 October 15, 2014, 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, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules related to the complex order book (''COB''). The text of the proposed rule change is provided below.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Rule 6.53C. Complex Orders on the Hybrid System

(a)–(d) No change.

. . . *Interpretations and Policies:*

.01–.10 No change.

.11 Execution of Complex Orders on the COB Open:

(a) Complex orders, including stock-option orders, do not participate in opening rotations for individual component option series legs conducted pursuant to Rule 6.2B. When the last of the individual component option series legs that make up a complex order strategy has opened (and, in the case of a stock-option order, the underlying stock has opened), the COB for that strategy will open. The COB will open with no trade, except as follows:

([a]*i*) The COB will open with a trade against the individual component option series legs if there are complex orders on only one side of the COB that are marketable against the opposite side of the derived net market. The resulting execution will occur at the derived net market price to the extent marketable *pursuant to the rules of trading priority otherwise applicable to incoming electronic orders in the individual component legs.* To the extent there is any remaining balance, the complex orders will *trade pursuant to subparagraph (ii) below or, if unable to trade,* be processed as they would on an intra-day basis under Rule 6.53C. [(]This *sub*paragraph ([a]*i*) is not applicable to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

stock-option orders because stock-option orders do not trade against the individual component option series legs when the COB opens.[)]

([b]*ii*) The COB will open *(or continue to open with another trade if a trade occurred pursuant to subparagraph (i) above)* with a trade against complex orders if there are complex orders in the COB *(including any remaining balance of an order that enters the COB after a partial trade with the legs pursuant to subparagraph (i))* that are marketable against each other and priced within the derived net market. The resulting execution will occur at a market clearing price that is inside the derived net market and that matches complex orders to the extent marketable *pursuant to the electronic allocation algorithm from Rule 6.45A or 6.45B, as applicable, as determined by the Exchange on a class-by-class basis*[. In determining the priority,] *with the addition that* the COB gives priority to complex orders whose net price is better than the market clearing price first, and then to complex orders at the market clearing price. To the extent there is any remaining balance, the complex orders will be processed as they would on an intra-day basis under Rule 6.53C. [(]This *sub*paragraph ([b]*ii*) is applicable to stock-option orders.[)]

([c]*b*) The ''derived net market'' for a stock-option order strategy will be calculated using the Exchange's best bid or offer in the individual option series leg(s) and the NBBO in the stock leg. The ''derived net market'' for any other complex order strategy will be calculated using the Exchange's best bid or offer in the individual option series legs.

(c) The Exchange may also use the process described in paragraph (a) of this Interpretation and Policy .11 when the COB reopens a strategy after a time period during which trading of that strategy was unavailable.

.12 No change.

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its rules related to its COB. Rule 6.53C, Interpretation and Policy .11 describes how complex orders execute when the COB opens. Complex orders do not participate in the opening rotation for the individual leg series (which occurs pursuant to Rule 6.2B). Rather, the COB for a complex order strategy will open when the last of the individual legs series that make up the strategy has opened (and, in the case of a stock-option order, when the underlying stock has opened). Under the current rules, the COB will open with no trade, except as follows:

- The COB will open with a trade against the individual component option series legs if there are complex orders on only one side of the COB that are marketable against the opposite side of the derived net market.[3] The resulting execution will occur at the derived net market price to the extent marketable. To the extent there is any remaining balance, the complex orders will be processed as they would on an intra-day basis under Rule 6.53C.[4] This does not apply to stock-option orders, which cannot trade against the individual leg series when the COB opens.
- The COB will open with a trade against complex orders if there are complex orders in the COB that are marketable against each other and priced within the derived net market. The resulting execution will occur at a market clearing price that is inside the derived net market and that matches complex orders to the extent marketable. In determining the priority, the COB gives priority to complex orders whose net price is better than the market clearing price first, and then to complex orders at the market clearing price. To the extent there is any remaining balance, the complex orders will be processed as they would on an intra-day basis under Rule 6.53C.[5] This applies to stock-option orders.

The proposed rule change adds to current paragraph (b) of Interpretation and Policy .11[6] that the Exchange may determine, on a class-by-class basis, which electronic allocation algorithm[7] will apply to complex order trades on the COB open pursuant to current paragraph (b) (proposed paragraph (a)(ii)).[8] The Exchange may determine on a class-by-class basis which electronic allocation algorithm from Rule 6.45A or 6.45B, as applicable, will apply to executions to opening rotations.[9] This opening allocation algorithm may be different than the intraday allocation algorithm. The proposed rule change provides the Exchange with the same flexibility with respect to executions of complex orders on the COB open. While Rule 6.53C, Interpretation and Policy .09 provides the Exchange with the flexibility to determine on a class-by-class basis which electronic allocation algorithm from Rule 6.45A or 6.45B, as applicable, will apply to COB executions (in lieu of the algorithm specified in Rule 6.53C(c)(ii)(2) and (3)[10]), Interpretation

[3] The ''derived net market'' is calculated based on the Exchange's best bid or offer (''BBO'') in the individual series legs. For stock-option orders, the derived net market is calculated based on the BBO in the individual option series leg(s) and the national best bid or offer (''NBBO'') in the stock leg. *See* Rule 6.53C, Interpretation and Policy .11(c) (which this rule filing proposes to change to paragraph (b)).

[4] Pursuant to Rule 6.53C, complex orders may either enter the COB or process through a complex order auction (COA).

[5] *Id.*

[6] The proposed rule change reorganizes Interpretation and Policy .11. This proposed language appears in proposed paragraph (a)(ii) (current paragraph (b)), which is the paragraph related to trades of complex orders on the COB at the open.

[7] The electronic allocation algorithms include price-time, pro-rata, and the ultimate matching algorithm base priorities and a combination of various optional priority overlays pertaining to public customer priority, Market-Maker participation entitlements, small order preference and market turn. *See* Rules 6.45A (related to equity options) and 6.45B (related to index and exchange-traded fund (ETF) options).

[8] The proposed rule change also adds to current paragraph (a) (proposed paragraph (a)(i)) that executions of complex orders against the individual legs will be pursuant to the rules of trading priority otherwise applicable to incoming electronic orders in the individual component legs. The current rule is silent on what electronic allocation algorithm applies to executions of complex orders on the COB against the individual legs. The Exchange believes the proposed rule text merely eliminates any potential confusion regarding how complex orders will be allocated in accordance with proposed paragraph (a)(i).

[9] *See* Rule 6.2B, Interpretation and Policy .04.

[10] Rule 6.53C(c)(ii) states that complex orders submitted to the COB may trade as follows: (a) A complex order in the COB will automatically execute against individual quotes and orders on the book; (b) complex orders in the COB that are marketable against each other will automatically execute, and the allocation of such executions will be pursuant to the rules of trading priority otherwise applicable to incoming electronic orders in the individual component legs; and (c) market

Continued

and Policy .11 does not state that the applicable allocation algorithm for complex order executions on the COB open may be different than the intraday allocation algorithm for the COB. The proposed rule change adds this detail to the rules and allows the Exchange to determine on a class-by-class basis which electronic allocation algorithm will apply to complex order trades on the COB open, which may be different than the allocation algorithm applicable to intraday complex order trades on the COB.[11] The Exchange will announce any allocation algorithm determinations via Regulatory Circular.[12]

The Exchange is not proposing to adopt any new allocation algorithms or priority rules nor is it proposing to modify the COB opening process.[13] Rather, it is adding detail to the Exchange rule regarding the COB opening process and providing the Exchange with flexibility to choose an algorithm from among the existing algorithms that will apply to complex order trades on the COB open, rather than simply defaulting to the algorithm in effect for intraday trading on the COB in that class. The Exchange believes this flexibility is consistent with its other rules regarding the determination of allocation algorithms and will further promote fair and orderly openings of strategies on the COB.[14]

The proposed rule change also adds detail to proposed paragraph (a)(ii) regarding which trades on the COB are deemed to be part of the opening of the COB (and thus subject to the allocation algorithm in place for the COB open). To the extent a complex order partially trades with the leg series on the COB open, and the remaining balance enters the COB (pursuant to Rule 6.53C) as set forth in proposed subparagraph (a)(i), if that remaining balance is marketable against another complex order on the COB at the open, those orders will execute as set forth in proposed subparagraph (a)(ii). Thus, any execution of that remaining balance on the COB is considered an execution at the COB open, as the open is intended to cause any marketable complex orders to trade, and thus subject to proposed subparagraph (a)(ii) (current paragraph (b)). The proposed rule change makes a corresponding change to proposed paragraph (a)(i) to provide that any remaining balance may trade pursuant to proposed paragraph (a)(ii) (if unable to trade, it will be processed as it would on an intra-day basis). The proposed rule change also makes a corresponding change to proposed paragraph (a)(ii) to provide that the COB will open, or continue to open, with a trade of complex orders on the COB, as the COB opening may already have been initiated by a trade pursuant to paragraph (a)(i).

For example, suppose Complex Order X is an order to buy 20 Series A and 20 Series B for a net price of $2.40 and on the COB at the open. If the market for Series A is $1.00–$1.20 and the market for Series B is $1.00–$1.20 (for a net price of $2.00–$2.40), with the offer to sell at $2.40 for 10 contracts, then when the COB opens, 10 contracts of Complex Order X will trade against the 10 contracts in the leg markets. The remaining balance of 10 of Complex Order X then enters the COB pursuant to Rule 6.53C(c). If Complex Order Y to sell 10 Series A and 10 Series B at $2.40 is on the COB at the open, then the remaining balance of Complex Order X will trade against Complex Order Y. This trade of Complex Order X against Complex Order Y is part of the COB open. If there were multiple complex orders at the same price, they would allocate in accordance with the algorithm in place for the COB open.

The Exchange believes that the rule text is currently unclear as to whether any remaining balance from proposed subparagraph (a)(i) enters the COB and is marketable against the COB would trade in accordance with COB open or COB intraday rules. Currently, if the remaining balance is marketable against other complex orders in the COB, the System will execute the remaining balance against orders in the COB as part of the COB open (and thus in accordance with the opening matching algorithm). Generally, the ''opening'' includes all trades that would ''clear'' the market.[15] The proposed rule change is consistent with this idea and adds this detail to proposed subparagraph (a)(ii) to codify the intent of the current rule.

In addition, the proposed rule change adds paragraph (c) to Interpretation and Policy .11, which states that the Exchange may use the process described in paragraph (a) when the COB reopens a strategy after a time period during which trading of that strategy was unavailable pursuant to the rules. The Exchange may use the opening rotation process to reopen a class after a trading halt.[16] The proposed rule change provides the Exchange with the same flexibility with respect to reopening the COB. Trading of strategies may be unavailable on the COB, for example, if there is a trading halt in the underlying security or if trading on the COB is ''on hold'' because the derived net market is outside of price check parameters set by the Exchange to prevent extreme executions.[17] The Exchange uses the opening rotation process to reopen after a trading halt to provide for an orderly reopening, and the Exchange would similarly like to provide for a fair and orderly reopening of the COB after any period during which COB trading was unavailable.

The proposed rule change also makes nonsubstantive, technical changes to Interpretation and Policy .11, including adding and modifying subparagraph lettering and numbering, indenting subparagraphs, and deleting unnecessary parentheticals.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[18] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[19] 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

participants may submit orders or quotes to trade against orders in the COB, and the allocation of such executions will be pursuant to Rule 6.45A(c) or 6.45B(c), as applicable (which describes the interaction of a market participant's quotes and orders with orders in the electronic book).

[11] Currently, complex orders that execute against complex orders in the COB on the open (proposed subparagraph (a)(ii)) allocate pursuant to price-time priority.

[12] *See* Rule 6.53C, Interpretation and Policy .01 (which states that the Exchange will announce to Trading Permit Holders via Regulatory Circular all pronouncements regarding determinations by the Exchange pursuant to Rule 6.53C and the Interpretations and Policies thereunder).

[13] The Exchange represents that complex orders continue to have opportunities to trade against the leg markets, both at the open pursuant to proposed paragraph (a)(i) and intraday pursuant to Rule 6.53C(c) (execution of orders in the COB) and (d) (execution of orders through COA). Additionally, this filing does not change the complex order priority principles (including public customer priority) set forth in Rules 6.45A, 6.45B and 6.53C.

[14] Additionally, because Rules 6.2B, Interpretation and Policy .04, 6.45A, 6.45B and 6.53C, Interpretation and Policy .09 provide the Exchange with flexibility to determine allocation algorithms on a class-by-class basis, the Exchange believes it is appropriate to provide the same class-by-class flexibility to trading at the COB open.

[15] *See* Rule 6.2B regarding the opening of series at a market-clearing price and Rule 6.53C, Interpretation and Policy .11(b) regarding the opening of the COB at a market-clearing price.

[16] *See* Rule 6.2B(g).

[17] *See* Rule 6.53C, Interpretation and Policy .08. For example, pursuant to paragraph (a)(3), if the BBO or derived net market is not within an acceptable price range, the System holds marketable limit orders and does not allow trading of complex orders for that strategy until the market is no longer outside the applicable price range.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[20] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change adds detail to its rules regarding the opening of trading on its COB, which benefits investors. The Exchange believes the flexibility provided by the proposed rule change is consistent with its other rules. The Exchange already has flexibility to apply a different allocation algorithm at the open of trading of simple orders and to use its opening procedure after a trading halt for simple orders.[21] It also already has the flexibility to apply a different allocation algorithm to complex order executions on the COB.[22] The Exchange is merely extending this flexibility to the opening and reopening of trading of complex orders on the COB. The Exchange notes that the level of trading activity is often different at the open than during the trading day. To ensure a fair and orderly opening in light of this trading activity, rules often allow the Exchange to apply them in a different manner to the opening of trading (such as different bid-ask differential requirements, different price reasonability checks and different allocation algorithms). The Exchange believes extending similar flexibility to the opening of complex order trading on the Exchange will allow it to similarly ensure a fair and orderly COB open, which protects investors and promotes just and equitable principles of trade.

The proposed rule change that specifies that the remaining balance of a complex order that partially trades with the individual leg series may be executed as part of the COB open provision, and that the COB open may include both trades of complex orders with the legs and with other complex orders, further benefits investors and promotes an open market by adding detail to the rules regarding how the System treats this remaining balance. Openings generally include a series of trades in order to execute all orders that are marketable upon the open, and the Exchange believes the proposed rule change is consistent with that idea.

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 that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change applies to all complex order trading on the COB when it opens or reopens. In addition, the proposed rule change applies only to the COB opening process on the Exchange. Its purpose is to include the COB opening procedure that is currently in place on the Exchange, which procedure is designed to open complex order strategies on the Exchange in a fair and orderly manner. The proposed rule change does not help CBOE market participants to the detriment of market participants on other exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[23] and Rule 19b–4(f)(6)[24] thereunder. 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 will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2014–071 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–2014–071. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2014–071, and should be submitted on or before November 21, 2014.

[20] *Id.*

[21] *See* Rule 6.2B(g) (use of opening procedures after a trading halt) and Interpretation and Policy .04 (determination of allocation algorithm on a class-by-class basis during opening rotations, which may be different than allocation algorithm for intraday trading).

[22] *See* Rule 6.53C, Interpretation and Policy .09.

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 240.19b–4(f)(6).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–25877 Filed 10–30–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–73441; File No. SR–Phlx–2014–66]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change To Adopt New Exchange Rule 1081, Solicitation Mechanism, To Introduce a New Electronic Solicitation Mechanism

October 27, 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 October 14, 2014, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new Exchange Rule 1081, Solicitation Mechanism, to introduce a new electronic solicitation mechanism pursuant to which a member can electronically submit all-or-none orders of 500 contracts or more (or, in the case of mini options, 5000 contracts or more) the member represents as agent against contra orders the member solicited. The Exchange is also proposing a corresponding amendment to the definition of ''professional'' in Rule 1000(b)(14) and a clarification to Rule 1080, Phlx XL and Phlx XL II.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to introduce an electronic solicitation mechanism. Currently, under Phlx Rule 1080(c)(ii)(C)(2), Order Entry Firms[3] must expose orders they represent as agent for at least one second before such orders may be automatically executed, in whole or in part, against orders solicited from members and non-member broker-dealers to transact with such orders.[4] The proposed rule change would provide an alternative, enabling a member to electronically execute orders it represents on behalf of a public customer, broker-dealer, or any other entity (an ''Agency Order'')[5] against solicited limit orders of a public customer, broker-dealer, or any other entity (a ''Solicited Order'') through a solicitation mechanism designed for this purpose.[6]

The new mechanism is a process by which a member (the ''Initiating Member'') can electronically submit all-or-none orders[7] of 500 contracts or more (or, in the case of mini options,[8] 5000 contracts or more) that it represents as agent against contra orders that it has solicited, and initiate an auction (the ''Solicitation Auction'').[9] As explained below, at the end of the Solicitation Auction, allocation will occur with all contracts of the Agency Order trading at an improved price against non-solicited contra-side interest or at the stop price, defined below, against the Solicited Order. The solicitation mechanism would accommodate both simple orders and Complex Orders.[10] Prior to the first time a member enters an Agency Order into the solicitation mechanism on behalf of a customer, the member would be required to deliver to the customer a written notification informing the customer that its Agency Orders may be executed using the Phlx's solicitation mechanism. Such written notification would be required to disclose the terms

[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Rule 1080(c)(ii)(A)(1) defines ''Order Entry Firm'' as a member organization of the Exchange that is able to route orders to AUTOM. (AUTOM is the Exchange's electronic quoting and trading system, which has been denoted in Exchange rules as XL II, XL and AUTOM.)

[4] Section (c), Solicited Orders, of Exchange Rule 1064, Crossing, Facilitation and Solicited Orders, governs execution of solicited orders by open outcry, on the Exchange trading floor, and is unaffected by proposed Rule 1081. Additionally, many aspects of the functionality of the proposed solicitation mechanism are similar to those provided for in Rule 1080(n), PIXL, and certain of the rules proposed herein consequently track the existing PIXL rules. The Exchange adopted PIXL in October 2010 as a price-improvement mechanism that is a component of the Exchange's fully automated options trading system, Phlx XL, now known as XL II. Like the solicitation mechanism, PIXL is a mechanism whereby an initiating member submits a two-sided (buy and sell) order into an auction process soliciting price improvement. *See* Securities Exchange Act Release Nos. 63027 (October 1, 2010), 75 FR 62160 (October 7, 2010) (order approving SR–Phlx–2010–108, for purposes of this proposed rule change, the ''PIXL Filing'') and 69845 (June 25, 2013), 78 FR 39429 (July 1, 2013) (SR–Phlx–2013–46 and, for purposes of this proposed rule change, the ''Complex PIXL Filing'') (Order Granting Approval To Proposed Rule Change, as Modified by Amendment No. 1, Regarding Complex Order PIXL).

[5] Rule 1080(b)(i)(A) provides in part that ''[f]or purposes of Exchange options trading, an agency order is any order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest.'' However, that provision did not contemplate, and is not applicable to, the capitalized and defined term ''Agency Order'' as used in proposed Rule 1081.

[6] To be clear, participants must ensure that their records adequately demonstrate the solicitation of an order that is entered into the mechanism for execution against an Agency Order as a Solicited Order prior to entry of such order into this mechanism.

[7] Exchange Rule 1066(c)(4) defines an ''all-or-none'' order as a market or limit order which is to be executed in its entirety or not at all.

[8] A given Solicitation Auction may be for options contracts exclusively or for mini options contracts exclusively, but cannot be used for a combination of both options contracts and mini options contracts together.

[9] Similar electronic functionality is offered today by competing exchanges. *See* Chicago Board Options Exchange (''CBOE'') Rule 6.74B, Solicitation Auction Mechanism (the ''CBOE Mechanism''), and International Securities Exchange (''ISE'') Rule 716(e), Solicited Order Mechanism (the ''ISE Mechanism'').

[10] A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. A Complex Order may also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or exchange-traded fund (''ETF'') coupled with the purchase or sale of options contract(s). Complex Orders on Phlx are discussed in Commentary .08 to Rule 1080.

and conditions contained in Rule 1081 and to be in a form approved by the Exchange.[11]

Solicitation Auction Eligibility Requirements

All options traded on the Exchange, including mini options, are eligible for the Solicitation Auction. Proposed Rule 1081(i) describes the circumstances under which an Initiating Member may initiate a Solicitation Auction.

Proposed Rule 1081(i)(A) provides that the Agency Order and the Solicited Order must each be limit orders for at least 500 contracts (or, in the case of mini options, at least 5000 contracts) and be designated as all-or-none. The orders must match in size, and their limit prices must match or cross in price.[12] If the orders cross in price, the price at which the Agency Order and the Solicited Order may be considered for submission pursuant to Rules 1081(i)(B) and (C) shall be the limit price of the Solicited Order.[13] The orders may not be stop or stop limit orders, must be marked with a time in force of day, good till cancelled or immediate or cancel, and will not be routed regardless of routing strategy indicated on the order.[14]

Pursuant to Rule 1081(i)(B) the Initiating Member must stop the entire Agency Order at a price (the ''stop price'') that is equal to or better than the National Best Bid/Offer (''NBBO'') on both sides of the market, provided that such price must be at least $0.01 better than any public customer non-contingent limit order on the Phlx order book and must be equal to the Agency Order's limit price or provide the Agency Order with a better price than its limit price. Stop prices may be submitted in $0.01 increments, regardless of the applicable Minimum Price Variation (the ''MPV''). Contingent orders [15] (including all-or-none, stop or stop-limit orders) on the book will not be considered when checking the acceptability of the stop price. Contingent orders are not represented as part of the Exchange Best Bid/Offer since they may only be executed if specific conditions are met. Given these orders are not represented as part of the Exchange Best Bid/Offer, they are not included in the NBBO and thus not considered when checking the acceptability of the stop price.[16]

Orders which are submitted which do not comply with the eligibility requirements set forth in proposed Rule 1081(i)(A) through (C) will be rejected upon receipt and ineligible to initiate a Solicitation Auction.[17] In addition, Agency Orders submitted at or before the opening of trading are not eligible to initiate a Solicitation Auction and will be rejected.[18] Orders submitted during a specified period of time, as determined by the Exchange and communicated to Exchange membership on the Exchange's Web site, prior to the end of the trading session in the affected series [19] (including, in the case of Complex Orders, in any series which is a component of the Complex Order) are not eligible to initiate a Solicitation Auction and will be rejected.[20] Agency Orders which are not Complex Orders received while another electronic auction (including any Solicitation Auction, PIXL auction, or any other kind of auction) involving the same option series is in progress are not eligible to initiate a Solicitation Auction and will be rejected.[21] Similarly, a Complex Agency Order received while another auction in the same Complex Order strategy is in progress is not eligible to initiate a Solicitation Auction and will be rejected.[22]

Finally a solicited order for the account of any Exchange specialist, streaming quote trader (''SQT''), remote streaming quote trader (''RSQT'') or non-streaming registered options trader (''ROT'') assigned in the affected series may not be a Solicited Order.[23] Consistent with the explanation the Exchange made in the PIXL Filing, the Exchange believes that in order to maintain fair and orderly markets, a market maker assigned in an option should not be solicited for participation in a Solicitation Auction by an Initiating

[11] *See* Rule 1081(i)(H). The rule would require delivery of this disclosure only prior to the first submission of an Agency Order on behalf of a customer rather than prior to the submission of each and every Agency Order on behalf of such customer.

[12] In the case of Complex Orders, the underlying components of both Complex Orders must also match. Additionally, all the option legs of each Complex Order must consist entirely of options or entirely of mini options.

[13] For example, assume an Agency Order to buy 1000 contracts for $2.00 and a Solicited Order to sell 1000 contracts at $1.90 are entered into the solicitation mechanism. Since the limits of these orders cross in price, the Agency Order and Solicited Order are considered to be submitted into the mechanism with a stop price equal to the Solicited Order price of $1.90.

[14] Whether an order is marked with a time in force of day as opposed to, for example, good till cancelled or immediate or cancel is irrelevant to the manner in which they will be treated once they are entered into the solicitation mechanism.

[15] A contingent order is a limit or market order to buy or sell that is contingent upon a condition being satisfied. PIXL also does not consider contingent orders on the book when checking the acceptability of the stop price.

[16] Rule 1081(i)(B) does not apply if the Agency Order is a Complex Order (a ''Complex Agency Order''). Rather, Rule 1081(i)(C) applies to Complex Agency Orders and requires them to be of a conforming ratio, as defined in Commentary.08(a)(ix) to Rule 1080. A Complex Agency Order which is not of a conforming ratio will be rejected. Rule 1081(i)(C) requires all component option legs of the order to be for at least 500 contracts (or, in the case of mini options, at least 5000 contracts). It also provides that the Initiating Member must stop the entire Complex Agency Order at a price that is better by at least $0.01 than the best net price (debit or credit) (i) available on the Complex Order book regardless of the Complex Order book size; and (ii) achievable from the best Phlx bids and offers for the individual options (an ''improved net price'') regardless of size, provided in either case that such price is equal to or better than the Complex Agency Order's limit price. Stop prices for Complex Agency Orders may be submitted in $0.01 increments, regardless of MPV, and contingent orders on the book will not be considered when checking the acceptability of the stop price. *See* proposed Rule 1081(i)(C).

[17] *See* Rule 1081(i)(D).

[18] *See* Rule 1081(i)(E).

[19] The term ''series'' of options means all option contracts of the same class having the same expiration date and exercise price. A ''class'' of options means all option contracts of the same ''type'' of option covering the same underlying stock. A ''type'' of option means the classification of an option contract as a put or a call. *See* Rule 1000, Applicability, Definitions and References.

[20] *See* Rule 1081(i)(F).

[21] A similar restriction applies with respect to PIXL auctions. *See* PIXL Rule 1080(n)(ii) which provides that ''[o]nly one Auction may be conducted at a time in any given series or strategy.''

[22] However, a simple Agency Order in one series that is submitted while an electronic auction is already in process with respect to a Complex Agency Order that includes the same series will not be rejected. Instead, a Solicitation Auction will be initiated for that incoming Agency Order offering each unique strategy or individual series the same opportunity to initiate an auction. This behavior is consistent with the handling of overlapping PIXL and Complex PIXL auctions. See PIXL Rule 1080(n)(ii). Complex Orders submitted during normal trading hours in a strategy which has not yet opened under Commentary .08 of Exchange Rule 1080 will cause the strategy to immediately open and a Solicitation Auction may be initiated. *See* Rule 1081(i)(E). In addition, neither a Solicitation Auction for a simple Agency Order or Complex Agency Order may be initiated prior to the regular opening of all individual components of the Solicited simple or Complex Agency Order.

[23] *See* Rule 1081(i)(G). An SQT is an Exchange Registered Options Trader (''ROT'') who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. See Exchange Rule 1014(b)(ii)(A). A RSQT is defined in Exchange Rule 1014(b)(ii)(B) as an ROT that is a member affiliated with a Remote Streaming Quote Trader Organization (''RSQTO'') with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A qualified RSQT may function as a Remote Specialist upon Exchange approval. An RSQT may only submit such quotations electronically from off the floor of the Exchange. An RSQT may not submit option quotations in eligible options to which such RSQT is assigned to the extent that the RSQT is also approved as a Remote Specialist in the same options. An RSQT may only trade in a market making capacity in classes of options in which he is assigned or approved as a Remote Specialist. An RSQTO is a member organization in good standing that satisfies the SQTO readiness requirements in Rule 507(a).

Member. The Exchange believes that market makers interested in participating in transactions on the Exchange should do so by way of his/her quotations, and should *respond* to Solicitation Auction notifications rather than create them by having an Initiating Member submitting Solicited Orders on the market maker's behalf.

Solicitation Auction Process

Pursuant to Rule 1081(ii)(A)(1), to begin the process the Initiating Member must mark the Agency Order and the Solicited Order for Solicitation Auction processing, and specify the stop price at which it seeks to cross the Agency Order with the Solicited Order. Once the Initiating Member has submitted an Agency Order and Solicited Order for processing pursuant to this subparagraph, such Agency Order and Solicited Order may not be modified or cancelled.[24]

Crossing Two Public Customer Orders Without a Solicitation Auction

As noted above, the proposed rule change would enable a member to electronically execute an Agency Order, which is an order it represents on behalf of a public customer, broker-dealer, or any other entity, against a Solicited Order, which is a solicited limit order of a public customer, broker-dealer, or any other entity through the solicitation mechanism.

However, pursuant to Rule 1081(v), if a member enters an Agency Order for the account of a public customer paired with a Solicited Order for the account of public customer and if the paired orders adhere to the eligibility requirements of Rule 1081(i), such paired orders will be automatically executed without a Solicitation Auction.[25] The execution price for such paired public customer orders (except if they are Complex Orders) must be expressed in the minimum quoting increment applicable to the affected series.[26] Such an execution may not trade through the NBBO or at the same price as any resting public customer order. If all-or-none orders are on the order book in the affected series, the public customer-to-public customer order may not be executed at a price at which the all-or-none order would be eligible to trade based on its limit price and size. [27]

In the case of a Complex Order, a public customer-to-public customer cross may only occur at a price which improves the calculated Phlx Best Bid/Offer or ''cPBBO'' and improves upon the net limit price of any Complex Orders (excluding all-or-none) on the Complex Order book in the same strategy.[28] If all-or-none Complex Orders [29] are on the Complex Order book in the same strategy, the public customer-to-public customer Complex Order may not be executed at a price at which the all-or-none Complex Order would be eligible to trade based on its limit price and size.

The Exchange believes that permitting such executions will benefit public customers on both sides of the crossing transaction by providing speedy and efficient executions to public customer orders in this circumstance while maintaining the priority of public customer interest on the book. The proposed handling of a public customer Agency Order paired with a public customer Solicited Order is similar to the handling of a public customer PIXL Order paired with a public customer Initiating Order which is submitted into the PIXL mechanism.[30]

Solicitation Auction Notification

Pursuant to proposed Rule 1081(ii)(A)(3), when the Exchange receives an order for Solicitation Auction processing, a Request for Response with the option details (meaning, the security, strike price, and expiration date), size and stop price, but not the side [31] of the Agency Order and the Solicitation Auction start time is then sent over the PHLX Orders data feed [32] and Specialized Quote Feed (''SQF'').[33] The Exchange believes that providing option details, size, and stop price is sufficient information for participants to determine whether to submit responses to the Solicitation Auction.[34]

Solicitation Auction

The Solicitation Auction process is described in proposed Rules 1081(ii)(A)(4)–(10). Following the issuance of the Request for Response, the Solicitation Auction will last for a period of 500 milliseconds [35] unless it is

[24] For clarity, Rule 1080(ii)(A)(l) does not apply to Complex Agency Orders. Rather, in a parallel provision, proposed Rule 1081(ii)(A)(2) provides that to initiate a Solicitation Auction in the case of a Complex Agency Order and Complex Solicited Order (a ''Complex Solicitation Auction''), the Initiating Member must mark the orders for Solicitation Auction processing, and specify the price (''stop price'') at which it seeks to cross the Complex Agency Order with the Complex Solicited Order. Once the Initiating Member has submitted the orders for processing pursuant to this subparagraph, they may not be modified or cancelled.

[25] The eligibility requirements require the orders to each be limit orders for at least 500 contracts (or, in the case of mini options, at least 5000 contracts) and be designated as all-or-none. The orders must match in size, and the limit prices must match or cross in price. The orders may not be stop or stop limit orders, must be marked with a time in force of day, good till cancelled or immediate or cancel, In the case of Complex Orders, the orders must be of a conforming ratio, and all component option legs of the order must be for at least 500 contracts (or, in the case of mini options, at least 5000 contracts). *See* Rule 1081(i). The Exchange also accommodates the crossing of two public customer orders in PIXL. *See* Rule 1080(n).

[26] The execution price for a Complex Order may be in $.01 increments.

[27] All-or-none orders can only be submitted for non-broker dealer customers. As stated above, all-or-none orders are not considered when checking the acceptability of the stop price of an Agency Order.

[28] The term ''cPBBO'' means the best net debit or credit price for a Complex Order Strategy based on the PBBO for the individual options components of such Complex Order Strategy, and, where the underlying security is a component of the Complex Order, the National Best Bid and/or Offer for the underlying security. *See* Rule 1080.08(a)(iv).

[29] The Exchange's trading system is capable of accepting all-or-none Complex Orders which are not, however, affirmatively permitted to be submitted under Exchange rules. Rule 1080.08(b)(v) provides in part that ''Complex Orders may be submitted as: All-or-none orders—to be executed in its entirety or not at all.'' *See* Securities Exchange Act Release No. 72351 (June 9, 2014), 79 FR 33977 (June 13, 2014) (SR–Phlx–2014–39). Nevertheless, all-or-none Complex Orders may not be submitted at this time. The Exchange anticipates that it will file a proposed rule change to provide for the handling and execution of all-or-none Complex Orders and thereafter permit the trading system to accept them. The instant proposed rule change describes how the solicitation mechanism will deal with all-or-none Complex Orders once they are permitted under Exchange rules. Complex Agency Orders and Complex Solicited Orders provided for herein are not Complex Orders that will require filing of a proposed rule change in order to be submitted into the system. Complex Agency Orders and Complex Solicited Orders, while all-or-none in character, are unique to the solicitation mechanism and are explicitly provided for herein.

[30] *See* Rule 1080(n)(vi).

[31] By omitting the side in the Request for Response, the system avoids disclosure of potentially material information that could move the market in the event the Agency Order does not trade at the conclusion of the Solicitation Auction. Market participants may enter Responses on both sides of the market.

[32] The PHLX Orders data feed is designed to provide the real-time status of simple and Complex Orders on the Phlx order book directly to subscribers. This includes new orders and changes to orders resting on the Phlx book for all Phlx listed options. PHLX Orders also includes opening imbalance information, PIXL information and Complex Order Live Auction (''COLA'') data.

[33] SQF is an interface that allows specialists and market makers to connect and send quotes into Phlx XL and assists them in responding to auctions and providing liquidity to the market.

[34] CBOE Rule 6.74B(b)(1)(B) suggests that Agency Orders submitted to its Solicitation Auction Mechanism include the proposed price at which an Agency Order is to be crossed with a solicited order as well as the size of the order. The rule does not specify that the side is to be indicated on the order. *See also* C2 Rule 6.52(b)(1)(B), which is similar.

[35] In April/May 2014, to determine whether the proposed Solicitation Auction timer would provide sufficient time to respond to a Request for Response, the Exchange polled all Phlx market makers, 20 of which responded. Of those that responded to the survey, 15 are currently responding to auctions on Phlx or intend to do so. 100% of those respondents indicated that their firm could respond to auctions with a duration of at least

concluded as the result of any of the circumstances described below.[36]

Any person or entity may submit Responses to the Request for Response, provided such Response is properly marked specifying the price, size and side of the market at which it would be willing to participate in the execution of the Agency Order. The Exchange believes that permitting any person or entity to submit Responses to the Request for Response should attract Responses from all sources, maximizing the potential for liquidity in the Solicitation Auction and thus affording the Agency Order the best opportunity for price improvement. Responses will not be visible to Solicitation Auction participants, and will not be disseminated to the Options Price Reporting Authority (''OPRA''). A Response may be for any size up to the size of the Agency Order.[37] The minimum price increment for Responses will be $0.01. A Response must be equal to or better than the NBBO on both sides of the market at the time of receipt of the Response. A Response with a price that is outside the NBBO at the time of receipt will be rejected.[38] Multiple Responses from the same member may be submitted at different prices on either or both sides of the market during the Solicitation Auction. Responses may be modified or cancelled during the Solicitation Auction. The acceptance and handling of Responses to a Solicitation Auction is the same as the acceptance and handling of Responses today for a PIXL Auction.[39]

Conclusion of the Solicitation Auction

Rules 1081(ii)(B)(1)–(4) describe a number of circumstances that will cause the Solicitation Auction to conclude. Generally, it will conclude at the end of the Solicitation Auction period, except that it may conclude earlier: (i) Any time the Phlx Best Bid/Offer (''PBBO'') on the same side of the market as the Agency Order crosses the stop price (since further price improvement will be unlikely and any Responses offering improvement are likely to be cancelled),[40] or (ii) any time there is a trading halt on the Exchange in the affected series (or, in the case of a Complex Solicitation Auction, any time there is a trading halt on the Exchange in any component of a Complex Agency Order).[41]

Pursuant to proposed Rule 1081(ii)(C), if the Solicitation Auction concludes before the expiration of the Solicitation Auction period as the result of the PBBO, cPBBO or Complex Order book (excluding all-or-none Complex Orders) crossing the stop price as described in Rules 1081(ii)(B)(2) and 1081(ii)(B)(3), the entire Agency Order will be executed using the allocation algorithm set forth in Rule 1081(ii)(E). The algorithm is described below under the heading ''Order Allocation''.

Also pursuant to proposed Rule 1081(ii)(C), if the Solicitation Auction concludes before the expiration of the Solicitation Auction period as the result of a trading halt, the entire Agency Order or Complex Agency Order will be executed solely against the Solicited Order or Complex Solicited Order at the stop price and any unexecuted Responses will be cancelled.[42] Responses and other interest present in the system will not be considered for trade against the Agency Order in the case of a trading halt. The Exchange believes this is appropriate since the participants representing tradable interest in the Solicitation Auction have not 'stopped' the Agency Order in its entirety and would have no means after the auction executions occur to offset the trading risk they would incur because the market is halted if they were permitted to execute against the Agency Order in this instance. However, the Solicited Order 'stopped' the Agency Order when the order was submitted into the Solicitation Auction and will therefore execute against the Agency Order if the Solicitation Auction concludes before the expiration of the Solicitation Auction period as the result of a trading halt.

Furthermore, when Agency and Solicited Orders are submitted into the Solicitation Auction, the stop price must be equal to or improve the NBBO and be at least $0.01 better than any public customer non-contingent limit orders on the Phlx order book. The Exchange believes that public customer interest submitted to Phlx after submission of the Agency and Solicited Orders but prior to the trading halt should not prevent the Agency Order from being executed at the stop price since such public customer interest was not present at the time the Agency Order was 'stopped' by the Solicited Order.

Entry of an unrelated market or marketable limit order on the opposite side of the market from the Agency Order received during the Solicitation Auction will *not* cause the Solicitation Auction to end early. Rather, the unrelated order will execute against interest outside the Solicitation Auction (if marketable against the PBBO) or will post to the book and then route if eligible for routing (in the case of an order marketable against the NBBO but not against the PBBO), pursuant to Rule 1081(ii)(D). If contracts remain from such unrelated order at the time the Solicitation Auction ends, the total unexecuted volume of such unrelated interest will be considered for participation in the order allocation process, regardless of the number of contracts in relation to the Solicitation Auction size, described in Rule 1081(ii)(E).[43] The handling of unrelated

50 milliseconds. Thus, the Exchange believes that the proposed Solicitation Auction duration of 500 milliseconds would provide a meaningful opportunity for participants on Phlx to respond to a Solicitation Auction, whether initiated by an Agency Order or a Complex Agency Order, while at the same time facilitating the prompt execution of orders. The Exchange notes that both ISE and Miami International Securities Exchange LLC (''MIAX'') rules provide for a 500 millisecond response time. *See* ISE Rule 716, Supplementary Material .04 and MIAX Rule 515A(b)(2)(i)(C).

[36] Rule 1080(c)(ii)(C)(2), which states that Order Entry Firms must expose orders they represent as agent for at least one second before such orders may be automatically executed against solicited orders, is being amended to clarify that it does not apply to Rule 1081, Solicitation Mechanism. *See also* Rule 1081(ii)(A)(4).

[37] Responses may not be submitted with an all-or-none contingency. (Note, however, that all-or-none orders entered and present in the system at the end of the Solicitation Auction will be considered for execution, as discussed below.)

[38] Similarly, in the case of Complex Order Responses, the Response must be equal to or better than the cPBBO on both sides, as defined in Commentary .08(a)(iv) of Rule 1080 at the time of receipt of the Complex Order Response but need not improve upon the limit of orders on the CBOOK. A Complex Order Response submitted with a price that is outside the cPBBO at the time of receipt will be rejected. *See* proposed Rule 1081(ii)(A)(9).

[39] *See* Exchange Rule 1080(n).

[40] In the case of a Complex Solicitation Auction, it would end any time the cPBBO or the Complex Order book, excluding all-or-none Complex Orders, on the same side of the market as the Complex Agency Order, crosses the stop price. *See* Rule 1081(ii)(B)(3).

[41] Trading on the Exchange in any option contract is halted whenever trading in the underlying security has been paused or halted by the primary listing market. *See* Exchange Rule 1047(e). *See also* Securities Exchange Act Release No. 62269 (June 10, 2010), 75 FR 34491 (June 17, 2010) (SR–Phlx–2010–82). Any executions that occur during any latency between the pause or halt in the underlying security and the processing of the halt on the Exchange are nullified pursuant to Exchange Rule 1092(c)(iv)(B).

[42] The Exchange's PIXL auction features similar functionality. Pursuant to Exchange Rule 1080(n)(ii)(C), in the case of a trading halt on the Exchange in the affected series, a PIXL Order will be executed solely against the Initiating Order at the stop price and any unexecuted PAN responses will be cancelled.

[43] Similarly, pursuant to Rule 1081(ii)(D), in the case of a Complex Solicitation Auction, an unrelated market or marketable limit Complex Order on the opposite side of the market from the Complex Agency Order as well as orders for the individual components of the unrelated Complex Order received during the Complex Solicitation

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opposite side interest which is received during the Solicitation Auction is the same as the handling of unrelated opposite side interest which is received during a PIXL Auction.[44] Participants submitting such unrelated interest may not be aware that an auction is in progress and should therefore be able to access firm quotes that comprise the NBBO without delay. Considering such unrelated interest which remains unexecuted upon receipt for participation in the order allocation process described in Rule 1081(ii)(E) will increase the number of contracts against which an Agency Order could be executed, and should therefore create more opportunities for the Agency Order to be executed at better prices.

Order Allocation

The allocation of orders executed upon the conclusion of a Solicitation Auction will depend upon whether the Solicitation Auction has yielded sufficient improving interest to improve the price of the entire Agency Order. As noted above, all contracts of the Agency Order will trade at an improved price against non-solicited contra-side interest or, in the event of insufficient improving interest to improve the price of the entire Agency Order, at the stop price against the Solicited Order.

Consideration of All-or-None Interest. All-or-none interest of a size which could potentially be executed consistent with its all-or-none contingency is considered when determining whether there is sufficient size to execute Agency Orders which are not Complex Agency Orders at price(s) better than the stop price. However, pursuant to proposed Rule 1081(ii)(E)(5), when determining if there is sufficient size to execute Complex Agency Orders at a price(s) better than the stop price, *no* all-or-none interest of *any* size will be considered. If there is sufficient size to execute the entire Complex Agency Order at a price(s) better than the stop price *irrespective* of any all-or-none interest that may be present, then all-or-none interest will be considered for trade and executed if possible. This difference in behavior is due to a system limitation relating to all-or-none Complex Orders.[45] The Exchange believes this behavior is not impactful since all-or-none Complex Orders are rare[46] and if sufficient size exists to execute the entire Complex Agency Order at an improved price, the all-or-none Complex Order will be considered for trade and executed if possible.

In all Solicitation Auctions, all-or-none interest will be executed pursuant to normal priority rules, except that it will not be executed if the all-or-none contingency cannot be satisfied. If an execution which can adhere to the all-or-none contingency is not possible, such all-or-none interest will be ignored and will remain on the order book or be cancelled if such interest is an immediate or cancel order.

For example, assume an Agency Order to buy 1000 contracts stopped by a Solicited Order at $2.00 is entered when the PBBO is $1.90—$2.10. Assume that during the Solicitation Auction, Responses are received to sell 700 contracts at $1.97 and sell 150 contracts at $1.99. In addition, assume an order to sell 300 contracts at $1.98 with an all-or-none contingency is received. At the end of the Solicitation Auction, the system will consider the all-or-none order when determining if there is sufficient size to execute the Agency Order at a price(s) better than the stop price since the all-or-none contingency can be satisfied by an execution. In this example, at the end of the Solicitation Auction, the Agency Order will execute against improving interest with 700 contracts executing at $1.97 and 300 contracts (representing the all-or-none order) executing at $1.98. Consider a similar scenario whereby the Responses received were to sell 700 contracts at $1.97 and sell 300 contracts at $1.99 and an all-or-none order to sell 500 contracts at $1.98 was received. In this scenario, the system will not consider the all-or-none order when determining if there is sufficient size to execute the Agency Order at a price(s) better than the stop price since the all-or-or none contingency cannot be satisfied by an execution. However, excluding the all-or-none order, the Agency Order can still be satisfied at a price(s) better than the stop price. In this scenario, at the end of the Solicitation Auction, the Agency Order will execute against improving interest with 700 contracts executing at $1.97 and 300 contracts executing at $1.99. The 500 contract all-or-none order does not execute because the all-or-none contingency cannot be satisfied.

Similarly, assume a Complex Agency Order to buy 1000 contracts stopped by a Complex Solicited Order at $2.00 is entered when the cPBBO is $1.90—$2.10. Assume that during the Solicitation Auction a Response is received to sell 900 contracts at $1.98 and an all-or-none Complex Order is received to sell 150 contracts at $1.99. At the end of the Solicitation Auction involving a Complex Order, the system does not consider all-or-none interest in determining whether it can execute the Complex Agency Order at a better price than the stop price. In this case, excluding the all-or-none Complex Order, only 900 contracts are available to sell at a better price than the stop price. Therefore the Complex Agency Order would trade against the Solicited Order at the $2.00 stop price. The all-or-none contracts would not be included because although more than 1000 contracts are offered at a better price than the $2.00 stop price, the system cannot both trade best prices first and adhere to the contingency of the all-or-none order while ensuring that the Agency Order trades 1000 contracts. If however, the example is changed and Responses are received to sell 900 contracts at $1.98 and sell 100 contracts at $1.99 and an order to sell 100 contracts at $1.98 all-or-none is received, at the end of the Solicitation Auction involving this Complex Order, there is enough interest which is not all-or-none to satisfy the Complex Agency Order at a better price than the $2.00 stop price. Therefore the Agency Order would be executed against the 900 lot at $1.98 and the remaining 100 contracts executed against the all-or-none Complex Order at $1.98.

Solicitation Auction with Sufficient Improving Interest. Pursuant to the Rule 1081(ii)(E)(1) algorithm, if there is sufficient size (considering all resting orders, quotes and Responses) to execute the entire Agency Order at a price or prices better than the stop price, the Agency Order will be executed against such better priced interest with public customers having priority at each price level. After public customer interest at a particular price level has been satisfied, including all-or-none orders with a size which can be satisfied, remaining contracts will be allocated among all Exchange quotes, orders and Responses in accordance with Exchange Rules

Auction will not cause the Complex Solicitation Auction to end early and will execute against interest outside of the Complex Solicitation Auction. If contracts remain from such unrelated Complex Order at the time the Complex Solicitation Auction ends, the total unexecuted volume of such unrelated interest will be considered for participation in the order allocation process, regardless of the number of contracts in relation to the Complex Solicitation Auction size, described in Rule 1081(ii)(E).

[44] *See* Exchange Rule 1080(n)(ii)(D).

[45] All-or-none simple orders reside with simple orders on the book. By contrast, all-or-none Complex Orders reside in a separate book, in a different part of the trading system. Thus aggregation of all-or-none Complex Orders with other Complex Orders is a more difficult process than aggregation of all-or-none simple orders with other simple orders.

[46] The Exchange reviewed six months of data which showed that all-or-none Complex Orders represented only 0.12% of all Complex Orders.

1014(g)(vii)(B)(1)(b) and (d), and the Solicited Order will be cancelled.[47]

Example of Solicitation Auction with Sufficient Improving Interest. To illustrate a case where a Solicitation Auction yields enough improving interest to better the stop price and the application of the Rule 1081(ii)(E)(1) algorithm, assume the NBBO is $0.95—$1.03, and a buy side Agency Order for 1000 contracts is submitted with a contra-side Solicited Order to stop the Agency Order at $1.00. During the Solicitation Auction, assume a market maker (''MM1'') Response is submitted to sell 800 contracts at $0.97, a broker-dealer Response is submitted to sell 100 contracts at $0.99, and a public customer sends in an order, outside of the Solicitation Auction, to sell 100 contracts at $0.99. Upon receipt of the public customer order, the NBBO changes to $0.95—$0.99. In addition, assume two market makers send in quotes of $0.95—$0.99 during the Solicitation Auction. Market Maker 2 (''MM2'') quotes $0.95—$0.99 with 100 contracts and Market Maker 3 (''MM3'') quotes $0.95—$0.99 with 50 contracts. At the end of the Solicitation Auction, since there is enough interest to execute the entire Agency Order at a price(s) better than the stop price, the Agency Order will be executed against the better priced interest as follows:

— the Agency Order trades 800 contracts at $0.97 against MM1 Response;

— the Agency Order trades 100 contracts at $0.99 against public customer;

— the Agency Order trades 67 contracts at $0.99 against MM2 quote (pro-rata allocation); and

— the Agency Order trades 33 contracts at $0.99 against MM3 quote (pro-rata allocation).

The broker-dealer does not trade any contracts since broker-dealer orders execute only after all public customer and market maker interest is satisfied. The unexecuted Solicited Order and broker-dealer Response are cancelled back to the sending participants.[48]

Solicitation Auction with Insufficient Improving Interest. Pursuant to proposed Rule 1081(ii)(E)(2), if there is not sufficient size (considering all resting orders, quotes and Responses) to execute the entire Agency Order at a price(s) better than the stop price, the Agency Order will be executed against the Solicited Order at the stop price provided such price is better than the limit of any public customer order (excluding all-or-none) on the limit order book, on either the same side as or the opposite side of the Agency Order, and equal to or better than the contra-side PBBO.[49] Otherwise, both the Agency Order and Solicited Order will be cancelled without a trade occurring. This proposed behavior ensures non-contingent public customer orders on the limit order book maintain priority. While the Exchange recognizes that at least one other solicitation mechanism offered by another exchange considers public customer orders on the limit order book at the stop price when determining if there is sufficient improving interest to satisfy the Agency Order, the proposed solicitation mechanism offered on Phlx will not consider such interest.[50] The Exchange believes that requiring the stop price to be at least $0.01 better than any public customer interest on the limit order book ensures public customer priority of existing interest and in turn provides the Solicited Order participant certainty that if an execution occurs at the stop price, such execution will represent the Solicited Order and not interest which arrived after the Solicited Order participant stopped the Agency Order for its entire size.

Example of Solicitation Auction with Insufficient Improving Interest. To illustrate a case where the Solicitation Auction has not yielded sufficient interest to improve the price for the entire Agency Order, assume the NBBO is $0.97—$1.03, and a buy side Agency Order for 1000 contracts is submitted with a contra-side Solicited Order to stop the Agency Order at $1.00. During the Solicitation Auction, assume a

[47] Similarly, pursuant to Rule 1081(ii)(E)(3), in the case of a Complex Solicitation Auction, if there is sufficient size (considering resting Complex Orders and Responses) to execute the entire Complex Agency Order at a price(s) better than the stop price, the Complex Agency Order will be executed against better priced Complex Orders, Responses, as well as quotes and orders which comprise the cPBBO at the end of the Complex Solicitation Auction. (The cPBBO is not considered in determining whether there is sufficient improving size because the market and/or size of the individual components can change between the calculation of sufficient size and the actual execution.) Such interest will be allocated at a given price in the following order: (i) to public customer Complex Orders and Responses in time priority; (ii) to SQT, RSQT, and non-SQT ROT Complex Orders and Responses on a size pro-rata basis; (iii) to non-market maker off-floor broker-dealer Complex Orders and Responses on a size pro-rata basis, and (iv) to quotes and orders which comprise the cPBBO at the end of the Complex Solicitation Auction with public customer interest being satisfied first in time priority, then to SQT, RSQT, and non-SQT ROT interest satisfied on a size pro-rata basis, and lastly to non-market maker off-floor broker-dealers on a size pro-rata basis. This allocation methodology is consistent with the allocation methodology utilized for a Complex Order executed in PIXL. In addition, providing public customer's with priority over SQT, RSQT, and non-SQT ROTs, who in turn have priority over non-market maker off-floor broker-dealers is the same priority scheme used for regular orders. *See* Exchange Rule 1014(g).

When determining if there is sufficient size to execute the entire Complex Agency Order at a price(s) better than the stop price, if the short sale price test in Rule 201 of Regulation SHO is triggered for a covered security, Complex Orders and Responses which are marked ''short'' will not be considered because of the possibility that a short sale price restriction may apply during the interval between assessing for adequate size and the execution of the Complex Agency Order. However, if there is sufficient size to execute the entire Complex Agency Order at a price(s) better than the stop price irrespective of any covered securities for which the price test is triggered that may be present, then all Complex Orders and Responses which are marked ''short'' will be considered for allocation in accordance with Rule 1081(ii)(J)(3).

[48] To illustrate a Complex Solicitation Auction with enough improving interest and the operation of Rule 1081(ii)(E)(3), assume that a Complex Order to buy one of option A and sell one of option B, 1000 times, with a cPBBO of $0.40 bid, $0.70 offer, is submitted with a stop price of $0.65. Assume that during the Solicitation Auction, the following Responses and order interest are received: a market maker (''MM1'') responds to sell the strategy 100 times at a price of $0.55; MM1 responds to sell the strategy 100 times at a price of $0.60; a broker-dealer responds to sell the strategy 400 times at a price of $0.60; a public customer Complex Order to sell the strategy 300 times at a price of $0.60; and another market maker (''MM2'') responds to sell the strategy 200 times at $0.60.

After all these Responses and orders are received, option A of the simple market moves causing the cPBBO to become offered 200 times at $0.60. Option A is quoted in the simple market as $1.00—$1.10 and Option B is quoted in the simple market as $0.50—$0.60. At the end of the Solicitation Auction, the Complex Agency Order will be executed as follows: the Complex Agency Order trades 100 contracts at $0.55 against MM1; the Complex Agency Order trades 300 contracts at $0.60 against public customer; the Complex Agency Order trades 100 contracts at $0.60 against MM1; the Complex Agency Order trades 200 contracts at $0.60 against MM2; the Complex Agency Order trades 300 contracts at $0.60 against the broker-dealer; and the Solicited Order and the residual unexecuted contracts of the broker-dealer Response are cancelled.

[49] Rule 1081(ii)(E)(2) does not apply to Complex Solicitation Auctions. Rather, a parallel provision, Rule 1081(ii)(E)(4), provides that in a Complex Solicitation Auction, if there is not sufficient size (considering resting Complex Orders and Responses) to execute the entire Complex Agency Order at a price(s) better than the stop price, the Complex Agency Order will be executed against the Solicited Order at the stop price, provided such stop price is better than the limit of any public customer Complex Order (excluding all-or-none) on the Complex Order book, better than the cPBBO when a public customer order (excluding all or none) is resting on the book in any component of the Complex Agency Order, and equal to or better than the cPBBO on the opposite side of the Complex Agency Order. This proposed behavior ensures non-contingent public customers on the limit order book maintain priority. Otherwise, both the Complex Agency Order and the Solicited Order will be cancelled with no trade occurring.

[50] *See* ISE Rule 716(e)(1) [sic] which provides in part that in the case of insufficient improving interest ''[i]f there are Priority Customer Orders on the Exchange on the opposite side of the Agency Order at the proposed execution price and there is sufficient size to execute the entire size of the Agency Order, the Agency Order will be executed against the bid or offer, and the solicited order will be cancelled.''

Response is submitted to sell 100 contracts at $0.97 and another to sell 100 contracts at $0.99. At the end of the Solicitation Auction period, since there is not enough interest to execute the entire Agency Order at a price(s) better than the stop price, the Agency Order will be executed at $1.00 against the Solicited Order. The unexecuted Responses are then cancelled back to the sending participant. [51]

Proposed Rule 1081(ii)(E)(6) provides that a single quote, order or Response shall not be allocated a number of contracts that is greater than its size.

Finally, Rule 1081(ii)(E)(7) provides that a Complex Agency Order consisting of a stock/ETF component will not execute against interest comprising the cPBBO at the end of the Complex Solicitation Auction.[52] Legging of a stock/ETF component would introduce the risk of a participant not receiving an execution on all components of the Complex Order and is therefore not considered as a means of executing a Complex Order which includes a stock/ETF component. The Exchange believes that introducing the risk of inability to fully execute a complex strategy is counterproductive to, and inconsistent with, the effort to allow Complex Orders in the solicitation mechanism.

Miscellaneous Provisions

Proposed Rules 1081(ii)(F) through (I) address the handling of the Agency Order and other orders, quotes and Responses when certain conditions are present. Pursuant to Rule 1081(ii)(F), if the market moves following the receipt of a Response, such that there are Responses that cross the then-existing NBBO (provided such NBBO is not crossed) at the time of the conclusion of the Solicitation Auction, such Responses will be executed, if possible, at their limit price(s).[53] Since Responses may be cancelled at any time prior to the conclusion of the Solicitation Auction, the Exchange believes that this behavior is, at best, highly unlikely as participants will cancel Responses when better priced interest that they could trade against is present in the marketplace. This behavior is consistent with the current handling of PAN Responses in a PIXL Auction.

Rule 1081(ii)(G) provides that if the Solicitation Auction price when trading against non-solicited interest (except if it is a Complex Solicitation Auction) would be the same as or cross the limit of an order (excluding an all-or-none order) on the limit order book on the same side of the market as the Agency Order, the Agency Order may only be executed at a price that is at least $0.01 better than the resting order's limit price provided such execution price improves the stop price. If such execution price would not improve the stop price, the Agency Order will be executed at a price which is $0.01 better for the Agency Order than the stop price provided the price does not equal or cross a public customer order and is equal to or improves upon the PBBO on the opposite side of the Agency Order.[54] If such price is not possible, the Agency Order and Solicited Order will be cancelled with no trade occurring. For example, assume the NBBO is $1.03–$1.10 when an order is submitted into the Solicitation Auction, that the Agency Order is buying and that the order is stopped at $1.05. The $1.03 bid is an order on Phlx. During the Solicitation Auction a Response arrives to sell at $1.03. At the end of the Solicitation Auction, if the Response to sell at $1.03 can fully satisfy the Agency Order, the auction price would be $1.03 but, since that price is the same as the price of a resting order on the book, the Agency Order will trade against the Response at $1.04 (an improvement of $0.01 over the resting order's limit). By contrast, assume a case where the NBBO is $1.03–$1.10 and where during the Auction an unrelated noncustomer order to pay $1.04 is received. This order rests on the book and the NBBO becomes $1.04–$1.10. Assume the same stop price of $1.05 for an Agency Order to buy, and the receipt of a Response to sell at $1.04 which can fully satisfy the Agency order. At the end of the Solicitation Auction, the auction price would be $1.04 which equals the resting order on the book. In this case, if the trade were executed with $0.01 improvement over the resting order limit (that is, if the trade were executed at $1.05) the execution would be at the stop price. The system does not consider the origin of the resting order but ensures the priority of such order, regardless of origin by requiring that any execution occur at a price which improves upon the limit of a resting order by at least $0.01. In addition, the system only permits the Solicited Order and no other interest to trade against the Agency Order at the stop price since the Solicited Order stopped the entire size Agency Order at a price which was required upon receipt to be equal to or improve the NBBO and to be at least $0.01 improvement over any public customer orders resting on the Phlx limit order book, thereby establishing priority at the stop price. Therefore the execution price in this case ($1.04) will be $0.01 better than the stop price. This system logic ensures that the Agency Order receives a better priced execution than the stop price when trading against interest other than the Solicited Order.

Rule 1081(ii)(I) provides that any unexecuted Responses or Solicited Orders will be cancelled at the end of the Solicitation Auction. This behavior is consistent with the handling of unexecuted PAN Responses and Initiating Orders in PIXL.[55] Both Responses and Solicited Orders are specifically entered into the Solicitation Auction to trade against the Agency

[51] To illustrate a Complex Solicitation Auction that yields insufficient improving interest and the operation of Rule 1081(ii)(E)(4), assume a Complex Order to buy one of option A and sell one of option B, 1000 times, with a cPBBO of $0.40 bid, $0.70 offer, is submitted with a stop price of $0.65. Assume that during the Complex Solicitation Auction, the following Responses and order interest are received: a market maker (''MM1'') responds to sell the strategy 100 times at a price of $0.55; MM1 responds to sell the strategy 100 times at a price of $0.60; a broker-dealer responds to sell the strategy 300 times at a price of $0.60; and another market maker (''MM2'') responds to sell the strategy 200 times at $0.60.

At the end of the Complex Solicitation Auction, since there is not sufficient size to execute the entire Complex Agency Order at a price(s) better than the stop price, the Complex Agency Order executes at the stop price of $0.65 against the Solicited Order. All unexecuted Responses are cancelled back to the sending participants.

[52] This provision parallels PIXL Rule 1080(n)(ii)(E)(2)(g) and is being proposed for the same reasons explained in the Complex PIXL Filing. This limitation is also consistent with the handling of Complex Orders that include a stock/ETF component and are entered into the Phlx XL system. Commentary .08(a)(i) to Rule 1080 states, for example, that stock-option orders can only be executed against other stock-option orders and cannot be executed by the System against orders for the individual components.

[53] Similarly, in the case of a Complex Solicitation Auction, if there are Responses that cross the then-existing cPBBO at the time of conclusion of the Complex Solicitation Auction, such Responses will be executed, if possible, at their limit prices. This provision parallels PIXL Rule 1080(n)(ii)(F).

[54] *See also* PIXL Rule 1080(n)(ii)(H). Proposed Rule 1081(ii)(G) does not apply to Complex Solicitation Auctions. Rather, a parallel provision, Rule 1081(ii)(H), provides that if the Complex Solicitation Auction price when trading against non-solicited interest would be the same as or cross the limit of that of a Complex Order (excluding all-or-none) on the Complex Order Book on the same side of the market as the Complex Agency Order, the Complex Agency Order may only be executed at a price that improves the resting order's limit price by at least $0.01, provided such execution price improves the stop price. If such execution price would be equal to or would not improve the stop price, the Agency Order will be executed $0.01 better than the stop price provided the price does not equal or cross a non-all-or-none public customer Complex Order or a non-all-or-none public customer order present in the cPBBO on the same side as the Complex Agency Order in a component of the Complex Order Strategy and is equal to or better than the cPBBO on the opposite side of the Complex Agency Order. If such price is not possible, the Agency Order and Solicited Order will be cancelled with no trade occurring. This functionality is consistent with that of Complex PIXL auctions.

[55] *See* Exchange Rule 1080(n)(ii)(I).

Order. The Exchange believes that cancelling the unexecuted portion of Responses and Solicited Orders is consistent with the expected behavior of such interest by the submitting participants.

Complex Agency Orders With Stock/ETF Components

Rule 1081(ii)(J) deals with Complex Agency Orders with stock or ETF components and generally tracks Rule 1080(n)(ii)(J) applicable to PIXL. Rule 1081(ii)(J)(1) states that member organizations may only submit Complex Agency Orders, Complex Solicited Orders, Complex Orders and/or Responses with a stock/ETF component if such orders/Responses comply with the Qualified Contingent Trade Exemption from Rule 611(a) of Regulation NMS pursuant to the Act. Member organizations submitting such orders with a stock/ETF component represent that such orders comply with the Qualified Contingent Trade Exemption. Members of FINRA or the NASDAQ Stock Market (''NASDAQ'') are required to have a Uniform Service Bureau/Executing Broker Agreement (''AGU'') with Nasdaq Execution Services LLC (''NES'') in order to trade orders containing a stock/ETF component; firms that are not members of FINRA or NASDAQ are required to have a Qualified Special Representative (''QSR'') arrangement with NES in order to trade orders containing a stock/ETF component.

New Rule 1081(ii)(J)(2) provides that where one component of a Complex Agency Order, Complex Solicited Order, Complex Order or Response is the underlying security, the Exchange shall electronically communicate the underlying security component of the Complex Agency Order (together with the Complex Solicited Order or Response, as applicable) to NES, its designated broker-dealer, for immediate execution.

Such execution and reporting will occur otherwise than on the Exchange and will be handled by NES pursuant to applicable rules regarding equity trading.

Finally, new Rule 1081(ii)(J)(3) states that when the short sale price test in Rule 201 of Regulation SHO [56] is triggered for a covered security, NES will not execute a short sale order in the underlying covered security component of a Complex Agency Order, Complex Solicited Order, Complex Order or Response if the price is equal to or below the current national best bid.[57] However, NES will execute a short sale order in the underlying covered security component of a Complex Agency Order, Complex Solicited Order, Complex Order or Response if such order is marked ''short exempt,'' regardless of whether it is at a price that is equal to or below the current national best bid.[58] If NES cannot execute the underlying covered security component of a Complex Agency Order, Complex Solicited Order, Complex Order or Response in accordance with Rule 201 of Regulation SHO, the Exchange will cancel back the Complex Agency Order, Complex Solicited Order, Complex Order or Response to the entering member organization. For purposes of this paragraph, the term ''covered security'' has the same meaning as in Rule 201(a)(1) of Regulation SHO.[59]

Regulatory Issues

The proposed rule change contains two paragraphs describing prohibited practices when participants use the solicitation mechanism. These new provisions track similar provisions in the PIXL rule.[60]

Proposed Rule 1081(iii) states that the Solicitation Auction may be used only where there is a genuine intention to execute a bona fide transaction. It will be considered a violation of Rule 1081 and will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Exchange Rule 707 if an Initiating Member submits an Agency Order (thereby initiating a Solicitation Auction) and also submits its own Response in the same Solicitation Auction. The purpose of this provision is to prevent Solicited Members from submitting an inaccurate or misleading stop price or trying to improve their allocation entitlement by participating with multiple expressions of interest.

Proposed Rule 1081(iv) states that a pattern or practice of submitting unrelated orders or quotes that cross the stop price causing a Solicitation Auction to conclude before the end of the Solicitation Auction period will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 707.

Definition of Professional in Rule 1000(b)(14)

In addition to adopting Rule 1081, the Exchange is amending Rule 1000(b)(14). In 2010 the Exchange amended its priority rules to give certain non-broker-dealer orders the same priority as broker-dealer orders. In so doing, the Exchange adopted a new defined term, the ''professional,'' for certain persons or entities.[61] Rule 1000(b)(14) defines professional as a person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). A professional account is treated in the same manner as an off-floor broker-dealer for purposes of Phlx Rule 1014(g), to which the trade allocation algorithm described in proposed Rule 1081(ii)(E)(1) refers. However, Rule 1000(b)(14) also currently states that all-or-none professional orders will be treated like customer orders. The Exchange proposes to amend Rule 1000(b)(14) by (i) specifying that orders submitted pursuant to Rule 1081 for the accounts of professionals will be treated in the same manner as off-floor broker-dealer orders for purposes of Rule 1014(g), and (ii) adding proposed Rule 1081 to the list of rules for the purpose of which a professional will be treated in the same manner as an off-floor broker-dealer. The effect of these changes to Rule 1014(b)(14) [sic] is that professionals will not receive the same priority afforded to public customers in a Solicitation Auction under new Rule 1081, and instead will be treated as broker-dealers in this regard.

Deployment

The Exchange anticipates that it will deploy the solicitation mechanism within 30 days of the Commission's approval of this proposed rule change. Members will be notified of the deployment date by an Options Trader Alert posted on the Exchange's Web site.

[56] 17 CFR 242.201. *See* Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010). *See also* Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, January 20, 2011 (''SHO FAQs'') at *www.sec.gov/divisions/marketreg/mrfaqregsho1204.htm.*

[57] The term ''national best bid'' is defined in SEC Rule 201(a)(4). 17 CFR 242.201(a)(4).

[58] The Exchange notes that a broker or dealer may mark a sell order ''short exempt'' only if the provisions of SEC Rule 201(c) or (d) are met. 17 CFR 242.200(g)(2). Since NES and the Exchange do not display the stock or ETF portion of a Complex Order, however, a broker-dealer should not mark the short sale order ''short exempt'' under Rule 201(c). *See* SHO FAQs Question and Answer Nos. 4.2, 5.4, and 5.5. *See also* Securities Exchange Act Release No. 63967 (February 25, 2011), 76 FR 12206 (March 4, 2011) (SR–Phlx–2011–27) (discussing, among other things, Complex Orders marked ''short exempt'') and the Complex PIXL Filing. The system will handle short sales of the orders and Responses described herein the same way it handles the short sales discussed in the Complex PIXL Filing.

[59] 17 CFR 242.201(a)(4).

[60] *See* Rules 1080(n)(iii) and (iv).

[61] *See* Securities Exchange Act Release No. 61802 (March 30, 2010), 75 FR 17193 (April 5, 2010) (approving SR–Phlx–2010–05).

2. *Statutory Basis*

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[62] in general, and furthers the objectives of Section 6(b)(5) of the Act[63] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest by providing new functionality that offers the potential for price improvement. Specifically, the new functionality may lead to an increase in Exchange volume and should allow the Exchange to better compete against other markets that already offer an electronic solicitation mechanism, while providing an opportunity for price improvement for Agency Orders.

As discussed below, the proposed solicitation mechanism on Phlx is similar in relevant respects to solicitation mechanisms on other exchanges. The Commission previously has found such mechanisms consistent with the Act, stating that they should allow for greater flexibility in pricing large-sized orders and may provide a greater opportunity for price improvement.[64] The Exchange believes that its proposal will allow the Exchange to better compete for solicited transactions, while providing an opportunity for price improvement for Agency Orders and assuring that public customers on the book are protected. The new solicitation mechanism should promote and foster competition and provide more options contracts with the opportunity for price improvement, which should benefit market participants, investors, and traders.

Section 11(a)(1) of the Act[65] prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion (collectively, ''covered accounts'') unless an exception applies. Rule 11a2–2(T) under the Act,[66] known as the ''effect versus execute'' rule, provides exchange members with an exemption from the Section 11(a)(1) prohibition. Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. To comply with Rule 11a2–2(T)'s conditions, a member: (i) Must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;[67] (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule. The Exchange believes that this proposed rule change is consistent with Section 11(a)(1) of the Act and the Commission's regulations thereunder.

The Rule's first condition is that orders for covered accounts be transmitted from off the exchange floor. In the context of automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.[68] Only specialists and on-floor SQTs[69] have the ability to submit orders into the solicitation mechanism from on the floor of the Exchange. These members, however, would be subject to the ''market maker'' exception to Section 11(a) of the Act and Rule 11a2–2(T)(a)(1) thereunder.[70] RSQTs may only submit orders into the solicitation mechanism from off the floor of the Exchange.[71] While Floor Brokers have the ability to submit orders they represent as agent to the electronic limit order book through the Exchange's Options Floor Broker Management System (''FBMS''), there is no mechanism by which such Floor Brokers can directly submit orders to the solicitation mechanism or send orders to off-floor broker-dealers through FBMS for indirect submission into the solicitation mechanism.[72] Because no Exchange members, other than specialists and SQTs, may submit orders into the solicitation mechanism from on the floor of the Exchange, the Exchange believes that the solicitation mechanism satisfies the off-floor transmission requirement.

Second, the Rule requires that the member not participate in the execution of its order. At no time following the submission of an order is a member organization able to acquire control or influence over the result or timing of an order's execution. The execution of a member's order is determined by what other orders are present in the solicitation mechanism and the priority of those orders.[73] Accordingly, the

[62] 15 U.S.C. 78f(b).

[63] 15 U.S.C. 78f(b)(5).

[64] *See* Securities Exchange Act Release Nos. 49141 (January 28, 2004), 69 FR 5625 (February 5, 2004) (SR–ISE–2001–22) (approval of ISE Solicited Order Mechanism); and 57610 (April 3, 2008), 73 FR 19535 (April 10, 2008) (SR–CBOE–2008–14) (approval of CBOE Solicitation Auction Mechanism).

[65] 15 U.S.C. 78k(a)(1).

[66] 17 CFR 240.11a2–2(T).

[67] The member may, however, participate in clearing and settling the transaction.

[68] *See, e.g.,* Securities Exchange Act Release Nos. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031) (approving BATS options trading); 59154 (December 23, 2008), 73 FR 80468 (December 31, 2008) (SR–BSE–2008–48) (approving equity securities listing and trading on BSE); 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080) (approving NOM options trading); 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131) (approving The Nasdaq Stock Market LLC); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (SR–PCX–00–25) (approving Archipelago Exchange); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (SR–NYSE–90–52 and SR–NYSE–90–53) (approving NYSE's Off-Hours Trading Facility); and 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (''1979 Release'').

[69] As discussed above, an SQT is an Exchange Registered Options Trader (''ROT'') who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(A).

[70] *See* 15 U.S.C. Section 78k(a)(1)(A); 17 CFR 240.11a2–2(T)(a)(1). There are no other on-floor members, other than Exchange specialists and SQTs, who have the ability to submit orders into the Solicitation Auction.

[71] As discussed above, an RSQT is defined in Exchange Rule 1014(b)(ii)(B) as an ROT that is a member affiliated with a Remote Streaming Quote Trader Organization (''RSQTO'') with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A qualified RSQT may function as a Remote Specialist upon Exchange approval. An RSQT may only submit such quotations electronically from off the floor of the Exchange. An RSQT may not submit option quotations in eligible options to which such RSQT is assigned to the extent that the RSQT is also approved as a Remote Specialist in the same options. An RSQT may only trade in a market making capacity in classes of options in which he is assigned or approved as a Remote Specialist. An RSQTO is a member organization in good standing that satisfies the SQTO readiness requirements in Rule 507(a). While RSQTs may only submit orders into the Auction from off the Exchange floor, RSQTs also would be subject to the ''market maker'' exception to Section 11(a) of the Act and Rule 11a2–2(T)(a)(1) thereunder.

[72] Because FBMS does not have the coding required to enter orders into the Solicitation Auction, it is impossible for such Floor Brokers to submit orders into the Solicitation Auction.

[73] A member may cancel or modify the order, or modify the instruction for executing the order, but only from off the floor. The Commission has stated that the non-participation requirement is satisfied under such circumstances, so long as such modifications or cancellations are also transmitted from off the floor. *See* Securities Exchange Act Release No. 14713 (April 27, 1978), 43 FR 18557 (May 1, 1978) (''1978 Release'') (stating that the ''non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed)

Exchange believes that a member does not participate in the execution of an order submitted to the solicitation mechanism.

Third, Rule 11a2–2(T) requires that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that this requirement is satisfied when automated systems, such as the solicitation mechanism, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.[74] The design of the solicitation mechanism ensures that no member organization has any special or unique trading advantage in the handling of its orders after transmitting its orders to the solicitation mechanism. The Exchange therefore believes the solicitation mechanism satisfies this requirement.

Fourth, in the case of a transaction effected for an account with respect to which the Initiating Member or an associated person thereof exercises investment discretion, neither the Initiating Member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2–2(T) thereunder.[75] Member organizations relying on Rule 11a2–2(T) for transactions effected through the solicitation mechanism must comply with this condition of the Rule.

For all of the foregoing reasons and as discussed in the proposal, the Exchange believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchange.

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 believes the proposal is pro-competitive. The proposal would diminish the potential for foregone market opportunities on the Exchange by allowing Agency Orders to be entered into the solicitation mechanism by all members. The solicitation mechanism is similar to electronic solicitation mechanism functionality that is allowed on two other options exchanges. The Exchange believes that the new solicitation mechanism functionality should help it compete with these other exchanges.

With respect to intra-market competition, the solicitation mechanism will be available to all Phlx members for the execution of Agency Orders. Moreover, as explained above, the proposal should encourage Phlx participants to compete amongst each other by responding with their best price and size for a particular Solicitation Auction.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Exchange 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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2014–66 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2014–66. 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–Phlx–2014–66 and should be submitted on or before November 21, 2014.

after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor'').

[74] In considering the operation of automated execution systems operated by an exchange, the Commission has noted that, while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T).

[75] *See* 17 CFR 240.11a2–2(T)(a)(2)(iv). In addition, Rule 11a2–2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement. *See* 17 CFR 240.11a2–2(T)(d). *See also* 1978 Release (stating ''[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests'').

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[76]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–25890 Filed 10–30–14; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions and extensions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov*.

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than December 30, 2014. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Modified Benefit Formula Questionnaire-Foreign Pension—0960–0561. SSA uses Form SSA–308 to determine exactly how much (if any) of a foreign pension may be used to reduce the amount of Title II Social Security retirement or disability benefits under the modified benefit formula. The respondents are applicants for Title II Social Security retirement or disability benefits who have foreign pensions.

Type of Request: Extension of an OMB-approved information collection.

Modality of completion	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–308	13,452	1	10	2,242
Greenberg cases	1,666	1	60	1,666
Totals	15,118			3,908

2. Filing Claims Under the Federal Tort Claims Act—20 CFR 429.101–429.110—0960–0667. The Federal Tort Claims Act is the legal mechanism for compensating persons injured by negligent or wrongful acts that occur during the performance of official duties by Federal employees. In accordance with the law, SSA accepts monetary claims filed under the Federal Tort Claims Act for damages against the United States, loss of property, personal injury, or death resulting from an SSA employee's wrongful act or omission. The regulation sections cleared under this information collection request require claimants to provide information SSA can use to investigate and determine whether to make an award, compromise, or settlement under the Federal Tort Claims Act. The respondents are individuals or entities making a claim under the Federal Tort Claims Act.

Type of Request: Extension of an OMB-approved information collection.

Modality of completion	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
429.102; 429.103[1]	1			1
429.104(a)	11	1	5	1
429.104(b)	43	1	5	4
429.104(c)	1	1	5	0
429.106(b)	6	1	10	1
Totals	62			7

[1] The 1 hour represents a placeholder burden. We are not reporting a burden for this collection because respondents complete OMB-approved Form SF–95.

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than December 1, 2014. Individuals can obtain copies of the OMB clearance package by writing to *OR.Reports.Clearance@ssa.gov.*

1. Partnership Questionnaire—20 CFR 404.1080–1082—0960–0025. SSA considers partnership income in determining entitlement to Social Security benefits. SSA uses information from Form SSA–7104 to determine

[76] 17 CFR 200.30–3(a)(12).

several aspects of eligibility for benefits, including the accuracy of reported partnership earnings, the veracity of a retirement, and lag earnings. The respondents are applicants for, and recipients of, Title II Social Security Old Age, Survivors, and Disability Insurance benefits.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of responses	Frequency of response	Average burden per response (minutes)	Total estimated annual burden (hours)
SSA–7104	12,350	1	30	6,175

2. Statement of Marital Relationship (By one of the parties)—20 CFR 404.726—0960–0038. SSA must obtain a signed statement from a spousal applicant if the applicant claims a common-law marriage to the insured in a state in which such marriages are recognized, and no formal marriage documentation exists. SSA uses information we collect on Form SSA–754–F4 to determine if an individual applying for spousal benefits meets the criteria of common-law marriage under state law. The respondents are applicants for spouse's Social Security benefits or Supplemental Security Income (SSI) payments.

Note: This is a correction notice. SSA published this information collection as a revision on August 28, 2014, at 79 FR 51387. Since we are no longer revising this information collection, it is now an extension of an OMB-approved information collection.

Type of Request: Extension of an OMB-approved information collection.

Modality of completion	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–754–F4	30,000	1	30	15,000

3. Workers' Compensation/Public Disability Questionnaire—20 CFR 404.408—0960–0247. Section 224 of the Social Security Act (Act) provides for the reduction of disability insurance benefits (DIB) when the combination of DIB and any workers' compensation (WC) or certain Federal, State or local public disability benefits (PDB) exceeds 80 percent of the worker's pre-disability earnings. SSA field office staff conducts face-to-face interviews with applicants using the electronic WC/PDB screens in the Modernized Claims System (MCS) to determine if the worker's receipt of WC or PDB payments will cause a reduction of DIB. The respondents are applicants for the Title II DIB.

Type of Request: Extension of an OMB-approved information collection.

Modality of completion	Number of responses	Frequency of response	Average burden per response (minutes)	Total estimated annual burden (hours)
MCS	248,000	1	15	62,000

4. Medicaid Use Report—20 CFR 416.268—0960–0267. Section 20 CFR 416.268 of the Code of Federal Regulations requires SSA to determine eligibility for (1) special SSI cash payments and for (2) special SSI eligibility status for a person who works despite a disabling condition. It also explains how, in order to qualify for special SSI eligibility status, an individual must establish that termination of eligibility for benefits under Title XIX of the Act would seriously inhibit the ability to continue employment. SSA uses the information required by this regulation to determine if an individual is entitled to special Title XVI SSI payments and, consequently, to Medicaid. The respondents are SSI recipients for whom SSA has stopped payments based on earnings.

Type of Request: Extension of an OMB-approved information collection.

Modality of completion	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
20 CFR 416.268	60,000	1	3	3,000

5. Medical Report on Adult with Allegation of Human Immunodeficiency Virus Infection; Medical Report on Child with Allegation of Human Immunodeficiency Virus Infection—20 CFR 416.933–20 CFR 416.934—0960–0500. Section 1631(e)(i) of the Act authorizes the Commissioner of SSA to gather information to make a determination about an applicant's claim for SSI payments; this procedure is the presumptive disability (PD). SSA uses Forms SSA–4814–F5 and SSA–4815–F6 to collect information necessary to determine if an individual with human immunodeficiency virus infection, who is applying for SSI disability benefits, meets the requirements for PD. The respondents are the medical sources of the applicants for SSI disability payments.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of responses	Frequency of response	Average burden per response (minutes)	Total estimated total annual burden (hours)
SSA–4814–F5	46,200	1	10	7,700
SSA–4815–F6	12,900	1	10	2,150
Totals	59,100			9,850

Dated: October 27, 2014.

Faye Lipsky,

Reports Clearance Director, Social Security Administration.

[FR Doc. 2014–25860 Filed 10–30–14; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 8934]

Overseas Security Advisory Council (OSAC) Meeting Notice; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on November 18, 2014. Pursuant to Section 10(d) of the Federal Advisory Committee Act (5 U.S.C. Appendix), and 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(7)(E), it has been determined that the meeting will be closed to the public. The meeting will focus on an examination of corporate security policies and procedures and will involve extensive discussion of trade secrets and proprietary commercial information that is privileged and confidential, and will discuss law enforcement investigative techniques and procedures. The agenda will include updated committee reports, a global threat overview, and other matters relating to private sector security policies and protective programs and the protection of U.S. business information overseas.

For more information, contact Marsha Thurman, Overseas Security Advisory Council, U.S. Department of State, Washington, DC 20522–2008, phone: 571–345–2214.

Dated: October 2, 2014.

Bill A. Miller,

Director of the Diplomatic Security Service, U.S. Department of State.

[FR Doc. 2014–25974 Filed 10–30–14; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airport Property Release Notice; Southbridge Municipal Airport, Southbridge, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments.

SUMMARY: The Federal Aviation Administration is considering a proposal to release approximately 30.29 acres of airport property for conservation land at the Southbridge Municipal Airport, Southbridge, MA. The acres to be released are currently not used for aeronautical purposes and are vacant wetlands. The released acres would be considered reimbursement for general funds the Town of Southbridge expended to provide the Airport with necessary services within the last 6 years. In accordance with section 47107(h) of Title 49 of the United States Code, the FAA invites public comment on this proposal.

DATES: Comments must be received on or before December 1, 2014.

ADDRESSES: You may send comments using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* and follow the instructions on providing comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W 12–140, 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.* Interested persons may inspect the request and supporting documents by contacting the FAA at the address listed under ''**FOR FURTHER INFORMATION CONTACT**.''

FOR FURTHER INFORMATION CONTACT: Thomas Vick, Compliance and Land Use Specialist, New England Region Airports Division, 12 New England Executive Park, Burlington, MA 01803. Telephone: 781–238–7618; Fax 781–238–7608.

SUPPLEMENTARY INFORMATION: In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 106–181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the **Federal Register** not less than 30 days before the Secretary may waive any condition imposed on a federally obligated airport by grant agreements. The FAA invites public comment on the request, under the provisions of AIR 21, to release land at the Southbridge Municipal Airport from the obligation to use that land solely for aeronautical purposes and to allow its use for environmental mitigation. All comments will be considered by the FAA to the extent practicable.

The Town of Southbridge has requested to release approximately 30.29 acres of airport land from federal obligations and to consider that land as reimbursement for $49,629.23 in general funds the Town of Southbridge expended to provide the Airport with services within the last 6 years. These acres are part of a larger 264-acre parcel currently depicted on the Airport Layout Plan. That larger parcel is identified as owned by the Town of Southbridge in the Worcester County Registry of Deeds, Book 2928, Page 89. The 30.29 acres are located on the west side of Commercial Drive and Barefoot Road and have 1369 feet of frontage on Commercial Drive and Barefoot Road, but also encompass a large area of wetlands based on MA Department of Environmental Protection Wetlands maps.

The Airport also completed a Real Estate Appraisal Report for the parcel. The appraisal was conducted in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). The appraisal concludes that the Southbridge Municipal Airport will receive value for the land in terms of liquidating its debt to the Town and, in addition, value in terms of having the land preserved as conservation land without development in perpetuity.

Issued in Burlington, Massachusetts, October 23, 2014.

Mary T. Walsh,

Manager, New England Airports Division.

[FR Doc. 2014–25885 Filed 10–30–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Federal Fiscal Year 2015 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the Federal Transportation Administration's (FTA) Fiscal Year (FY) 2015 Annual List of Certifications and Assurances for FTA Grants and Cooperative Agreements, which can be found at FTA's Web site, *http://www.fta.dot.gov.* This notice provides a condensed list of the various pre-award Certifications and Assurances that may apply to an Applicant for FTA funding and its Project. This notice also describes both FTA's and the Applicant's responsibilities with respect to the Certifications and Assurances and highlights the differences between the FY 2015 Certifications and Assurances and those published for FY 2014. In addition, this notice also provides instructions on how and when to submit Certifications and Assurances for FY 2015. Each Applicant for FTA funding must submit the Certifications and Assurances that apply to it and the Project or Projects for which it seeks funding during FY 2015. An Applicant typically acts through its certified or authorized representative (You). You, as the Applicant's Certified or Authorized Representative, must have the authority to sign the Applicant's Certifications and Assurances and to bind the Applicant's compliance with the Certifications and Assurances you select on its behalf.

DATES: *Effective Date:* These FY 2015 Certifications and Assurances are effective October 1, 2014, the first day of FY 2015.

FOR FURTHER INFORMATION CONTACT: The appropriate Regional or Metropolitan Office listed in this notice. For copies of related documents and information, see our Web site at *http://www.fta.dot.gov* or contact our Office of Administration at 202–366–4007.

Region 1: Boston

States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont, Telephone # 617–494–2055

Region 2: New York

States served: New York, and New Jersey, Telephone # 212–668–2170

Region 3: Philadelphia

States served: Delaware, Maryland, Pennsylvania, Virginia, and West Virginia, Telephone # 215–656–7100

Region 4: Atlanta

States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Territories served: Puerto Rico and the U.S. Virgin Islands, Telephone # 404–865–5600

Region 5: Chicago

States served: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin, Telephone # 312–353–2789

Region 6: Dallas/Ft. Worth

States served: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas, Telephone # 817–978–0550

Region 7: Kansas City

States served: Iowa, Kansas, Missouri, and Nebraska, Telephone # 816–329–3920

Region 8: Denver

States served: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming, Telephone # 720–963–3300

Region 9: San Francisco

States served: Arizona, California, Hawaii, Nevada, Territories served: Guam, American Samoa and the Northern Mariana Islands, Telephone # 415–744–3133

Region 10: Seattle

States served: Alaska, Idaho, Oregon, and Washington; Telephone # 206–220–7954

Chicago Metropolitan Office

Area served: Chicago Metropolitan Area; Telephone # 312–886–1616

Los Angeles Metropolitan Office

Area served: Los Angeles Metropolitan Area; Telephone # 213–202–3950

Lower Manhattan Recovery Office

Area served: Lower Manhattan; Telephone # 212–668–1770

New York Metropolitan Office

Area served: New York Metropolitan Area; Telephone # 212–668–2201

Philadelphia Metropolitan Office

Area served: Philadelphia Metropolitan Area; Telephone # 215–656–7070

Washington DC Metropolitan Office

Area served: Washington DC Metropolitan Area; Telephone # 202–219–3562/202–219–3565

SUPPLEMENTARY INFORMATION:

1. What are FTA's responsibilities?

The second sentence of 49 U.S.C. 5323(n) states in pertinent part that, ''[t]he Secretary [of Transportation] shall publish annually a list of all certifications required under this chapter [49 U.S.C. chapter 53]. . . .'' The first sentence of 49 U.S.C. 5323(n) states that, ''[a] certification required under this chapter [53] and any additional certification or assurance required by law or regulation to be submitted to the Secretary [who delegated that authority to the Federal Transit Administrator] may be consolidated into a single document to be submitted annually as part of a grant application under this chapter [53].'' Therefore, FTA has grouped those certifications and assurances into the following twenty-four (24) groups:

Group 01. Required Certifications and Assurances for Each Applicant,
Group 02. Lobbying,
Group 03. Procurement and Procurement Systems,
Group 04. Private Sector Protections,
Group 05. Rolling Stock Reviews and Bus Testing,
Group 06. Demand Responsive Service,
Group 07. Intelligent Transportation Systems,
Group 08. Interest and Financing Costs and Acquisition of Capital Assets by Lease,
Group 09. Transit Asset Management Plan and Public Transportation Agency Safety Plan,
Group 10. Alcohol and Controlled Substances Testing,
Group 11. Fixed Guideway Capital Investment Grants Program (New Starts, Small Starts, and Core Capacity) and Capital Investment Program in Effect before MAP–21 Became Effective,
Group 12. State of Good Repair Program,
Group 13. Fixed Guideway Modernization Grant Program,
Group 14. Bus and Bus Facilities Formula Grants Program and Bus and Bus-Related Equipment and Facilities Grant Program (Discretionary),
Group 15. Urbanized Area Formula Grants Programs/Passenger Ferry Grants Program/Job Access and Reverse Commute (JARC) Formula Grant Program,
Group 16. Seniors/Elderly/Individuals With Disabilities Programs/New Freedom Program,

Group 17. Rural/Other Than Urbanized Areas/Appalachian Development/Over-the-Road Bus Accessibility Programs,
Group 18. Tribal Transit Programs (Public Transportation on Indian Reservations Programs),
Group 19. Low or No Emission/Clean Fuels Grant Programs,
Group 20. Paul S. Sarbanes Transit in Parks Program,
Group 21. State Safety Oversight Grant Program,
Group 22. Public Transportation Emergency Relief Program,
Group 23. Expedited Project Delivery Pilot Program, and
Group 24. Infrastructure Finance Programs.

Since 1995, FTA has consolidated the Certifications and Assurances required by law or regulation into a single document for publication in the **Federal Register**. To receive Federal funding appropriated or made available for the Grant, Cooperative Agreement, Loan, Loan Guarantee, and Line of Credit programs FTA administers, your Applicant must submit the annual Certifications and Assurances required for the type of funding it seeks.

U.S. DOT's annual appropriations for part of FY 2015 have been included in the Continuing Appropriations Resolution, 2015, Public Law 113–164, September 19, 2014. As such, FTA is publishing its FY 2015 Certifications and Assurances now.

These FY 2015 Certifications and Assurances supersede any Certifications and Assurances published in an earlier fiscal year or that may have appeared as illustrations in an FTA circular. After publication in the **Federal Register**, each Applicant must submit adequate FY 2015 Certifications and Assurances before FTA may award funding to support that Applicant's request for funding for its Project.

2. What is the legal effect of the Certifications and Assurances?

a. Pre-Award Representations. Certifications and Assurances are pre-award representations typically required by Federal law or regulation that your Applicant must submit before FTA may provide Federal funding for its Project. In general, these FY 2015 Certifications and Assurances are effective October 1, 2014, except as FTA determines otherwise in writing. For FY 2015, however, certain Certifications and Assurances in effect prior to MAP–21 continue to apply to certain Projects and Project activities that are financed with funds appropriated or made available for FY 2012 or a previous fiscal year. Conversely, some Certifications and Assurances apply to both Programs funded by MAP–21 and Programs financed with funds appropriated or made available for FY 2012 or a previous fiscal year. Therefore, it is critically important that you know the fiscal year in which the funding awarded for your Applicant's Project was appropriated.

Upon publication in the **Federal Register**, FTA may not award funding for your Applicant's Project until it submits sufficient FY 2015 Certifications and Assurances.

b. Binding Commitment. Your Applicant must comply with any Certifications or Assurances you make on its behalf, irrespective of whether you remain your Applicant's authorized representative. When you submit its Certifications and Assurances to FTA, both you and your Applicant are agreeing to comply with those terms. For programs that require specific certifications, when the Certifications and Assurances that would apply under MAP–21 differ from the Certifications and Assurances that would apply in FY 2012 or a previous fiscal year, FTA continues to include both types in the single Group used to facilitate funding your Applicant's request(s).

c. Length of Commitment. Your Applicant's FY 2015 Certifications and Assurances remain in effect until its Project is closed or the useful life of its Project property has expired, whichever is later. If your Applicant provides different Certifications and Assurances in a later fiscal year, the later Certifications and Assurances will usually apply to its Project, except as FTA determines otherwise in writing.

d. Duration. You and your Applicant may use the FY 2015 Certifications and Assurances in Appendix A to support applications for FTA funding until FTA issues its FY 2016 Certifications and Assurances.

e. The FY 2015 Certifications and Assurances Are Not a Complete List of Federal Requirements. FTA cautions that the FY 2015 Certifications and Assurances focus mainly on those representations that your Applicant is required to submit to FTA before FTA may award Federal funds for its Project. Consequently, these Certifications and Assurances do not include many other Federal requirements that will apply to your Applicant and its Project.

f. Federal Requirements. In addition to the information in this notice and FTA's FY 2015 Apportionments Notice, FTA also strongly encourages you and your Applicant's staff and prospective and current Third Party Participants to review all Federal legislation, regulations, and guidance that apply to your Applicant's proposed Project and to them. The FY 2015 Master Agreement identifies many of those requirements and applicable guidance, and may be accessed at *http://www.fta.dot.gov.*

g. Penalties for False or Fraudulent Statements. If you provide any false or fraudulent statement to the Federal Government on behalf of your Applicant or yourself, you may incur both Federal civil and criminal penalties. *See:*

(1) The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 *et seq.,*

(2) U.S. Department of Transportation (U.S. DOT) regulations, ''Program Fraud Civil Remedies,'' 49 CFR part 31, and

(3) Section 5323(l)(1) of title 49, United States Code, which provides for Federal criminal penalties and termination of Federal funding should you provide, on behalf of your Applicant or yourself, a false or fraudulent certificate, submission, or statement in connection with the Federal transit program authorized by 49 U.S.C. chapter 53.

3. What are your responsibilities?

a. Make Sure All Involved With Your Applicant's Project Understand the Federal Requirements That Will Apply to Your Applicant and its Project. FTA strongly advises you, as your Applicant's authorized representative, to read this notice and the Certifications and Assurances on the FTA Web site before selecting Certifications and Assurances on behalf of your Applicant. In addition to reading the information in this notice and on the FTA Web site, *http://www.fta.dot.gov*).

FTA also advises you to read the information accompanying the apportionment tables when FTA publishes its FY 2015 Apportionment Notices.

Your Applicant is responsible for compliance with all Federal requirements that apply to itself and its Project. Nevertheless, people and entities participating in your Applicant's Project, including Subrecipients, Third Party Contractors, and Third Party Sub-contractors (Third Party Participants) can seriously affect its ability to comply with those Federal requirements. Accordingly, all Third Party Participants involved in its Project need to know and should agree to comply with the Federal requirements that affect the Applicant's Project-related activities and themselves.

b. Subrecipient and Other Third Party Participation. Except in limited circumstances when FTA has determined otherwise, your Applicant is ultimately responsible for compliance with all Certifications and Assurances that you select on its behalf, even though much of its Project will be carried out by Subrecipients or other

Third Party Participants. Therefore, FTA strongly recommends that you take appropriate measures to ensure that Subrecipients and other Third Party Participants in your Applicant's Project do not take actions that will cause your Applicant to violate the representations made in its Certifications and Assurances.

c. Submit Your Applicant's Certifications and Assurances. You must submit all Groups of the FY 2015 Certifications and Assurances that apply to your Applicant and the Projects for which it seeks FTA funding in FY 2015. For your convenience, FTA recommends that you submit all twenty-four (24) Groups of Certifications and Assurances. Those provisions of the various Certifications and Assurances that do not apply to your Applicant or its Project will not be enforced.

d. Obtain the Affirmation of Your Applicant's Attorney. You must obtain an affirmation of your Applicant's Attorney, signed in FY 2015, stating that your Applicant has sufficient authority under its State and local law to certify its compliance with the FY 2015 Certifications and Assurances that you have selected on its behalf. Your Applicant's Attorney must sign this affirmation during FY 2015. An Affirmation of its Attorney dated in a previous fiscal year is insufficient, unless FTA expressly determines otherwise in writing.

e. When To Submit.

(1) If your Applicant is applying for funding under any of the discretionary capital programs (*e.g.,* New Starts, Small Starts, or Core Capacity Improvement), FTA expects to receive your Applicant's FY 2015 Certifications and Assurances within ninety (90) days from the date of this publication or soon after the submittal of your Applicant's request for FY 2015 funding. Likewise, if your Applicant is a current FTA recipient with an active Project funded with FTA capital or formula funds, FTA expects to receive your Applicant's FY 2015 Certifications and Assurances within ninety (90) days from the date of this publication or soon after the submittal of your Applicant's request for FY 2015 funding.

(2) If your Applicant seeks funding from an FTA program other than a formula program or a discretionary capital program, *e.g.,* for a Research, Development, Demonstration, and Deployment Project, FTA expects to receive your Applicant's FY 2015 Certifications and Assurances with the submission of its Application for FTA funding or soon thereafter.

4. Where are FTA's FY 2015 Certifications and Assurances?

a. FTA's FY 2015 Certifications and Assurances are available at FTA's Web site, *http://www.fta.dot.gov,* and

b. TEAM-Web, FTA's electronic award and management system, *http://ftateamweb.fta.dot.gov,* at the ''Cert's & Assurances'' tab of the ''View/Modify Recipients'' page in the ''Recipients'' option.

5. What changes have been made since FY 2014?

a. In the Preface, FTA is clarifying that these Certifications and Assurances apply to an Applicant for a Loan, Loan Guarantee, and Line of Credit as well as to an Applicant for a Grant or Cooperative Agreement,

b. In the Preface, FTA is asking that each member of a team, consortium, joint venture, or partnership to identify itself and its role in the Project as a Recipient, Subrecipient, or Third Party Contractor,

c. In the Preface, we have added a reference to the Highway and Transportation Funding Act of 2014, Public Law 113–159, August 8, 2014, the Continuing Appropriations Resolution, 2015, Public Law 113–164, September 19, 2014, and other Appropriations Acts or Continuing Resolutions funding the Department of Transportation during Fiscal Year 2015,

d. In Group 01.A, Section 2, FTA has clarified that ''Agreements'' means Charter Service Agreement and School Bus Agreement, and

e. In Group 01A, Section 3, FTA is clarifying that these Certifications and Assurances apply to an Applicant for a Loan, Loan Guarantee, and Line of Credit as well as to an Applicant for a Grant or Cooperative Agreement.

6. How do you submit the Certifications and Assurances?

a. Electronic Submission. Except in rare circumstances and if permitted by FTA, you must submit your Applicant's FY 2015 Certifications and Assurances in TEAM-Web. To submit the Certifications and Assurances, you must be registered in TEAM-Web.

The TEAM-Web ''Recipients'' option at the ''Cert's & Assurances'' tab of the ''View/Modify Recipients'' page contains fields for individually selecting among the 24 Groups of Certifications and Assurances that apply to your Applicant and also a designated field for selecting all 24 Groups, of which only the requirements that apply to you or your Applicant will be enforced.

The ''Cert's & Assurances'' tab has a field for you to enter your personal identification number (PIN), which is your electronic signature. There is also a field for the Attorney's PIN, affirming your Applicant's legal authority to make and comply with the Certifications and Assurances you have selected on its behalf. You may enter your PIN in place of the Attorney's PIN, provided that your Applicant has on file a similar affirmation that has been written, dated, and signed by its Attorney in FY 2015.

b. Paper Submission. You may submit your Applicant's FY 2015 Certifications and Assurances on paper only if you cannot submit them electronically in TEAM-Web and FTA agrees to accept your Applicant's Signature Pages in a typewritten hard copy. If you cannot submit your Applicant's Certifications and Assurances electronically and if FTA so permits, you must submit the Signature Pages at the end of the Certifications and Assurances indicating the Groups of Certifications and Assurances your Applicant is providing. You may place a single mark in the designated space to signify your Applicant's agreement to comply with all Groups of Certifications and Assurances to the extent that they apply to it, or select the specific Groups of Certifications and Assurances that apply to it and its Projects.

You must enter your signature on the last Signature Page and provide an Affirmation by your Applicant's Attorney concerning your Applicant's legal capacity to make and comply with the FY 2015 Certifications and Assurances selected on its behalf. You may enter your signature in place of the Attorney's signature in the Affirmation by Applicant's Attorney part of the Signature Page, provided that your Applicant has on file a similar affirmation, written, dated, and signed by its Attorney in FY 2015.

For more information, you may contact the appropriate FTA Regional or Metropolitan Office.

Authority. 49 U.S.C. chapter 53; the Moving Ahead for Progress in the 21st Century Act (MAP–21) Pub. L. 112–141, June 6, 2012; other Federal laws administered by FTA; U.S. DOT and FTA regulations codified or to be codified in Title 49, Code of Federal Regulations; and FTA Circulars.

Therese W. McMillan,

Acting Administrator.

[FR Doc. 2014–25942 Filed 10–30–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2014 0139]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel SOUTHERN ACCENT; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before December 1, 2014.

ADDRESSES: Comments should refer to docket number MARAD–2014–0139. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SOUTHERN ACCENT is:

Intended Commercial Use of Vessel: ''The vessel will be used for Passenger Charter and charter fishing trips''.

Geographic Region: ''Maryland and Virginia''.

The complete application is given in DOT docket MARAD–2014–0139 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

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 (Volume 65, Number 70; Pages 19477–78).

Dated: October 23, 2014.

By Order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2014–25955 Filed 10–30–14; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2014 0133]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel PATTY T; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before December 1, 2014.

ADDRESSES: Comments should refer to docket number MARAD–2014–0133. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PATTY T is:

Intended Commercial Use of Vessel: ''Carrying of charter passengers and charter fishing passengers''

Geographic Region: ''New York''

The complete application is given in DOT docket MARAD–2014–0133 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

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 (Volume 65, Number 70; Pages 19477–78).

Dated: October 23, 2014.

By Order of the Maritime Administrator.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2014–25954 Filed 10–30–14; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2014–0032]

Aston Martin Lagonda Limited; Partial Grant of Petition for Temporary Exemption From New Requirements of Standard No. 214

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of partial grant of a petition for a temporary exemption from new requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 214, *Side Impact Protection.*

SUMMARY: In accordance with the procedures in 49 CFR Part 555, NHTSA is partially granting a petition from Aston Martin Lagonda Limited (Aston Martin), a small volume manufacturer, for a temporary exemption from new side impact protection requirements of FMVSS No. 214. The agency is granting the petitioner's request for a temporary exemption from the standard's new pole test requirements, limited to 670 vehicles. The basis for the grant is that compliance would cause substantial economic hardship to a low volume manufacturer that has tried in good faith to comply with the standard. In accordance with NHTSA's regulations, prominent labels must be affixed to each exempted vehicle to warn prospective purchasers that the vehicle has been exempted from the pole test requirements.

However, NHTSA is denying the petitioner's separate request for a temporary exemption from FMVSS No. 214's moving deformable barrier (MDB) test requirement. The agency does not believe that the petitioner has shown a need for such an exemption.

DATES: This exemption from the pole test requirements applies to the following vehicles:

- DB9 coupe model produced from September 1, 2014 until August 31, 2016;
- DB9 convertible model produced from September 1, 2015 until August 31, 2016;
- Vantage coupe model produced from September 1, 2014 until August 31, 2017; and
- Vantage convertible model produced from September 1, 2015 until August 31, 2017.

FOR FURTHER INFORMATION CONTACT: Deirdre R. Fujita, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., West Building, Washington, DC 20590. Telephone: (202) 366–2992; Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION: NHTSA is granting a request from Aston Martin for a temporary exemption from FMVSS No. 214's new pole test requirements. The basis for the grant is that compliance would cause substantial economic hardship to a low volume manufacturer that has tried in good faith to comply with the standard. NHTSA finds that Aston Martin has made a good faith effort to meet the pole test requirements by, *inter alia,* installing side air bags in its vehicles substantially ahead of the date on which it was required to do so by that standard. Further, Aston Martin believes that its test data indicate that its vehicles may in fact pass the performance criteria of the pole test with the current side air bag. However, the petitioner believes further that a tested vehicle did not produce test results with a margin sufficient to enable it to certify compliance with the pole test.

NHTSA also concludes that denying the petition regarding the pole test, thus forcing a cessation of production until the affected vehicles could be upgraded, would cause petitioner substantial economic hardship and that it is warranted under Part 555 to provide the petitioner time to produce vehicles with a side air bag system that enables the vehicle to pass the pole test requirement with a greater margin.

I. Background

a. Statutory Authority for Temporary Exemptions

The National Traffic and Motor Vehicle Safety Act (Safety Act) recognizes that small manufacturers have more limited resources and capabilities than large manufacturers for meeting NHTSA's standards. The Safety Act provides the Secretary of Transportation authority to grant a temporary exemption to a manufacturer whose total motor vehicle production in the most recent year of production is not more than 10,000 vehicles, if the exemption would be consistent with the public interest and the Safety Act, and compliance with the standard would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith.[1] Such an exemption may be granted for not more than 3 years (49 U.S.C. 30113(e)).[2]

NHTSA established 49 CFR Part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards,* to implement the statutory provisions concerning temporary exemptions. Under Part 555, a petitioner must provide specified information in submitting a petition for exemption. Among other matters, the petitioner must set forth the basis of the application and a description of its efforts to comply with the standards.

b. FMVSS No. 214

In 2007, NHTSA published a final rule upgrading FMVSS No. 214.[3] The rule incorporated a dynamic pole test into the standard, requiring vehicle manufacturers to assure head and improved chest protection in side crashes by technologies such as head protection side air bags and torso side air bags. The final rule adopted use of two advanced test dummies in the new pole test, one called the ES–2re representing mid-size males, and the other called the SID–IIs, which represents small stature females. The final rule also enhanced the standard's MDB test by replacing the then-existing 50th percentile adult male dummy used in the front seat of tested vehicles with the more biofidelic ES–2re dummy and by using the SID–IIs dummy in the rear seat.

The pole and enhanced MDB test requirements were phased in, starting in 2010 for most vehicles (see S13 [4]), but manufacturers producing or assembling fewer than 5,000 vehicles annually for sale in the United States had a different

[1] This authority is set forth at 49 U.S.C. 30113. The Secretary has delegated the authority for implementing this section to NHTSA.

[2] The Safety Act expressly provides for renewal of an exemption on reapplication. A renewal under subsection (b)(3)(B)(i) may be granted for not more than 3 years. However, NHTSA cautions manufacturers that the agency's decision to grant an initial petition in no way predetermines that the agency will repeatedly grant renewal petitions, thereby imparting semi-permanent status to an exemption from a safety standard. Exempted manufacturers seeking renewal must bear in mind that the agency is directed to consider financial hardship as but one factor. We also consider the manufacturer's ongoing good faith efforts to comply with the regulation, the public interest, consistency with the Safety Act generally, as well as other such matters provided in the statute.

[3] 72 FR 51908 (September 11, 2007); response to petitions for reconsideration 73 FR 32473 (June 9, 2008), 75 FR 12123 (March 15, 2010).

[4] References in this paragraph are to sections in FMVSS No. 214.

schedule (see S9.1.3(a)(1) and S7.2.4(a)(1)). These manufacturers were excluded from the phase-in of the pole test requirements but are required to certify the compliance of vehicles manufactured on or after September 1, 2014. For convertibles, the pole test applies to vehicles manufactured on or after September 1, 2015 (S9.1.3(d)(1)). The enhanced MDB test requirement has the same phase-in schedule and compliance dates as the pole test (see MDB requirements, S7.2.1, S7.2.4(a), and S7.2.4(a)(3)).

With regard to the phase-in, Aston Martin manufactures approximately 4,000 Aston Martin brand vehicles per year worldwide. Thus, the requirements that are the subject of the petition are FMVSS No. 214's pole and enhanced MDB requirements applying to the petitioner's sedans (coupes) manufactured on or after September 1, 2014, and to its convertibles manufactured on or after September 1, 2015.

c. Overview of Petition [5]

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR Part 555, Aston Martin petitioned NHTSA requesting a temporary exemption from the pole test requirements and enhanced MDB test of FMVSS No. 214. The basis for the application is that compliance would cause Aston Martin substantial economic hardship and that the petitioner has tried in good faith to comply with the standard.

Aston Martin has asked for a temporary exemption for two of its four vehicle models, the DB9 and Vantage. At the time NHTSA issued the pole test and enhanced MDB test requirements in 2007, Aston Martin was planning a new generation of the DB9 and Vantage models. Aston Martin's plan was to: (a) Replace the DB9 and Vantage models with new generation models that would meet the new requirements by the 2014 compliance date; and (b) apply its resources toward redesigning two other models (the Vanquish and Rapide S), that were not scheduled for replacement before 2014, to achieve compliance with the requirements by 2014.

However, ''because of little market recovery since 2009,'' [6] Aston Martin's sales volumes have not been sufficient to fund the first part of the original plan, and the DB9 and Vantage models ''now have to remain in production slightly longer than anticipated.'' [7] The petitioner states that due to funding constraints, Aston Martin could not initiate the start of FMVSS No. 214 compliance programs on the next generation DB9 and Vantage vehicles until April 2013, when the company received funds from an investor that could be used to deliver the next generation of vehicles. The petitioner states: ''This capital increase did not include monies for FMVSS 214 compliance for DB9 & Vantage car lines as the next generation of models were originally planned to be launched in August 2014.'' [8] Aston Martin states it needs the exemption to continue production of the DB9 and Vantage for the U.S. market until the replacement generation vehicles are ready.

Aston Martin requested that approximately 670 vehicles be covered by the exemption. Aston Martin believes that the cost of meeting the pole and enhanced MDB requirements for these vehicles ''would be cost prohibitive given that these models will cease USA production in the near term and the cost of amortization over the approximately 670 cars at issue would be economically infeasible.'' [9]

The petition requests an exemption for the following periods:

- DB9 coupe model production from September 1, 2014 until August 31, 2016;
- DB9 convertible model production from September 1, 2015 until August 31, 2016;
- Vantage coupe model production from September 1, 2014 until August 31, 2017; and,
- Vantage convertible model production from September 1, 2015 until August 31, 2017.

Petitioner's Assertion That Granting the Petition Is in the Public Interest

Aston Martin asserts that the requested exemption is consistent with the public interest for the following reasons.

1. Aston Martin states that it knows of no deaths or serious injuries that were associated with side impact events or related to the current FMVSS No. 214 protection system in current DB9 and Vantage models. Further, the petitioner also states that [10]—

> the pole tests that Aston Martin has performed on a DB9 test car did in fact pass the minimum pole test requirements in FMVSS 214. However, Aston Martin cannot self-certify compliance on the basis of a single test with the margin of pass obtained in that test. . . . Nonetheless the pass does indicate that the risk to the public in the existent car would not be contrary to the public interest.

2. Denial would force removal of a vehicle currently sold in the U.S.

3. The number of vehicles to be sold in the U.S. during the exemption period is very low and the number of annual miles driven in Aston Martin vehicles is very low (on average 2,617 miles).[11]

4. Granting the exemption would protect consumer choice.[12]

5. The current DB9 and Vantage models comply with all FMVSSs other than the requirements of FMVSS No. 214 that are the subject of the petition, and meet the requirements of the upgraded roof crush resistance standard (FMVSS No. 216) ahead of the September 1, 2015 compliance date for the vehicles (final rule upgrading FMVSS No. 216, 74 FR 22348, May 12, 2009).

6. Aston Martin refers to a decision by NHTSA to grant a Lotus request for a temporary exemption from FMVSS No 208 and states that the agency made clear that a limited exemption is considered to be far more in the public interest compared to a broad waiver. Aston Martin states: ''The request here is precisely so limited.'' [13]

7. The denial of the exemption request would have a negative effect on U.S. employment.[14]

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[5] Aston Martin originally submitted a petition in July 2013, and then resubmitted its petition in November 2013. A copy of the November 6, 2013 petition is in the docket for this document. To view the petition, go to *http://www.regulations.gov* and enter Docket Number NHTSA–2014–0032. A summary is also provided in NHTSA's notice of receipt of the petition, 79 FR 17231, *infra.*

[6] Aston Martin petition for temporary exemption, p. 18.

[7] Id., p. 11.

[8] Id., exhibit 6, p. 2.

[9] The petitioner has provided engineering and financial information demonstrating how compliance or failure to obtain an exemption would cause substantial economic hardship; a description of its efforts to comply with the standards; why it believes granting the petition is in the public interest; a discussion of alternate means of compliance considered; a description of the steps it will take while the exemption is in effect and the estimated date by which full compliance will be achieved. The petitioner provided confidential production figures in support of its claims.

[10] The petitioner provided the values recorded by the test dummy in the crash test.

[11] The petitioner refers to a 2006 decision by NHTSA to grant a request for a temporary exemption from Ferrari (71 FR 29389) (''Ferrari grant''), in which NHTSA noted that the low number of vehicles affected by the exemption (less than 2,000) and the low number of annual miles driven in the vehicles were factors supporting a finding that the exemption will have a negligible impact on motor vehicle safety.

[12] On this point, the petitioner cites the 2006 Ferrari grant and includes the following statement from NHTSA: ''As discussed in previous decisions on temporary exemption applications, the agency believes that the public interest is served by affording consumers a wider variety of motor vehicle choices.'' (71 FR at 29390.)

[13] Aston Martin petition for temporary exemption, p. 12. The petitioner did not provide a citation for ''the recent Lotus decision'' but we assume the reference is to NHTSA's document at 78 FR 15114, March 8, 2013, *infra.*

[14] Aston Martin references the Ferrari grant, in which NHTSA stated (71 FR at 29390): ''We note

II. Notice of Receipt and Summary of Comments

On March 27, 2014, NHTSA published in the **Federal Register** (79 FR 17231; Docket No. NHTSA–2014–0032) a notice of receipt of Aston Martin's petition for a temporary exemption, and provided an opportunity for public comment. NHTSA received no comments opposing the petition.

Over 40 comments were received supporting the petition.[15] These comments were from the Aston Martin dealers in the U.S., many of their employees, and some Aston Martin owners. Each of the dealers emphasized strong concerns about the negative impact that elimination of the DB9 and Vantage models would have on their dealerships,[16] as the dealers would be restricted in their product range and would only be able to sell Vanquish and Rapide S, which, the commenters asserted, would impact their ability to maintain a financially viable operation. All of the dealers expressed alarm about the impact that a denial of the petition would have on all tiers of employment[17] at their place of business and in their community.[18] All of the dealers emphasized that jobs would be lost at their dealership if the DB9 and Vantage models could not be sold. Employees who commented expressed worry about their jobs if the petition were denied. Many dealers expressed concern about the effect of a denial on present and future customer support,[19] as the ''Thinning of our network could expose customers to complete loss of ownership support—ex. loss of the Seattle store would place next closest store in [San Francisco] area 850 miles away.'' [20]

Aston Martin Washington DC dealer principal James R. Walker states in his comment[21] that currently, Aston Martin dealers are ''barely profitable'' and that franchise composition is fragile. Mr. Walker believes that the loss of sales of the DB9 and Vantage could very likely result in some dealers deciding to ''shutter the franchise,'' which would result in a significant impact on employment. The commenter estimates that if dealers decide to ''shutter'' franchises, 230 Aston Martin employees in the U.S. would face the loss of their jobs, along with a ''substantial number'' of another 300 jobs that are in part supported by Aston Martin.

Agency Decision

a. Pole Test Requirement

NHTSA is granting Aston Martin's request for a temporary exemption from FMVSS No. 214's new pole test requirements.

The granting of hardship exemptions from FMVSSs is conditioned on the agency's finding that the petitioning manufacturer has ''tried to comply with the standard in good faith.'' [22] A petitioning manufacturer's effort to comply with the standard from which exemption is sought is thus extremely important to NHTSA when considering a hardship exemption.

On March 8, 2013, NHTSA granted a temporary exemption petition request from Group Lotus plc (Lotus) regarding an advanced air bag requirement[23] of FMVSS No. 208, ''Occupant crash protection.'' While NHTSA granted the petition, the agency did so while emphasizing an evolved agency view of such petitions.[24] The advanced air bag requirement had engendered a number of hardship petitions from small volume manufacturers, which typically were granted when the manufacturer had supplied standard air bags instead of advanced air bags. However, as time went on and the years passed following adoption of the advanced air bag requirements, NHTSA decided it was not in the public interest to continue to grant exemptions from the requirements ''under the same terms as in the past.'' [25] NHTSA stated in the Lotus notice (78 FR at 15115)—

> In deciding whether to grant an exemption based on substantial economic hardship and good faith efforts, NHTSA considers the steps that the manufacturer has already taken to achieve compliance, as well as the future steps the manufacturer plans to take during the exemption period and the estimated date by which full compliance will be achieved.[26]

That announcement was made in the context of the advanced air bag hardship petitions relating to the May 2000 final rule. The majority of the petitions then before the agency were petitions for extension of previously granted exemptions. The advanced air bag exemption requests contrast somewhat with Aston Martin's request for an exemption from the FMVSS No. 214 pole test requirement, since the latter is a new requirement adopted in 2007. Nonetheless, the announcement in the Lotus notice signaled that the agency has sharpened its focus on the effort that manufacturers make to achieve compliance when claiming financial hardship in meeting a standard.

With that background in mind, NHTSA has analyzed Aston Martin's petition and the effort that the petitioner made to meet the pole test requirement. NHTSA believes that the petitioner has tried to comply with the pole test requirement in good faith.

The FMVSS No. 214 pole test requires vehicle manufacturers to provide head and improved chest protection in side crashes. Manufacturers currently meet the pole test requirement by way of side air bag technology. Installing a side air bag in a vehicle that does not have a side air bag is an intensive endeavor involving extensive redesign of the vehicle's side structure and seating system, and includes installation of side impact sensors that sense when to deploy the side air bag and sensors that monitor side air bag readiness. In short, installation of side air bags involves a significant investment of effort, planning, resources, and vehicle redesign.

In 2006, Aston Martin began installing side air bags in the DB9 and Vantage model vehicles. Side air bags were considered advanced technology at the time and were generally not needed to meet the FMVSSs that had applied to passenger vehicles. Yet, motor vehicle manufacturers began incorporating side air bag technology in response to NHTSA's call for action to improve vehicle compatibility in vehicle-to-vehicle crashes of higher-riding light trucks and vans (LTVs) with passenger cars.[27] The voluntary installation of side

that Ferrari is a well-established company with a small but not insignificant U.S. presence and we believe that an 85 percent sales reduction would negatively affect U.S. employment. Specifically, reduction in sales would likely affect employment not only at Ferrari North America, but also at Ferrari dealers, repair specialists, and several small service providers that transport Ferrari vehicles from the port of entry to the rest of the United States. Traditionally, the agency has concluded that the public interest is served in affording continued employment to the petitioner's U.S. work force.''

[15] In this section, we refer to comments by their entry number in Docket No. NHTSA–2014–0032.

[16] See, e.g., comment 0028.

[17] See, e.g., comments 0020 and 0032.

[18] Comment 0028.

[19] Comment 0048.

[20] Comment 0003.

[21] *Id.*

[22] 49 U.S.C. 30113(b)(3)(B)(i).

[23] In 2000, NHTSA published a final rule that upgraded FMVSS No. 208's requirements for air bags in passenger cars and light trucks, requiring what are commonly known as ''advanced air bags.'' See final rule at 65 FR 30680, May 12, 2000.

[24] 78 FR 15114.

[25] 78 FR at 15115, col. 2. See also denial of petition of Pagani Automobili SpA, 76 FR 47641, August 5, 2011.

[26] 49 CFR 555.6(a)(2). [Footnote in text.]

[27] See notice of proposed rulemaking (NPRM) on the FMVSS No. 214 pole test, 69 FR 27990, 27995; May 17, 2004. NHTSA's call for action resulted in a ''voluntary industry commitment'' by vehicle manufacturers in 2003 to enhance occupant protection in side crashes of LTVs into passenger cars by accelerating the installation of side impact air bags.

impact air bags by vehicle manufacturers prior to a Federal mandate was considered by NHTSA to be a laudable industry initiative to meet the goal of saving lives ''sooner than through the traditional regulatory approach.'' [28]

Aston Martin's installation of side air bags in the DB9 and Vantage model vehicles involved a significant investment of work and resources on the part of the petitioner. We conclude that the petitioner's installation of the safety countermeasures 8 years ahead of the September 1, 2014 effective date of the final rule is evidence of a good faith effort to meet the pole test requirement. In 2011, the manufacturer crash tested a DB9 coupe in an FMVSS No. 214 pole test and found that that the performance was not with a margin sufficient to enable Aston Martin to certify compliance with the pole test. Yet, data from the test show that ES–2re dummy readings were actually below the performance threshold of FMVSS No. 214. The ''passing'' values obtained from the test are further evidence of the petitioner's good faith effort to meet the pole test requirement.

We note that the petitioner has asked for a 3-year exemption for just one of the models (Vantage Coupe) and only a 1- to 2-year exemption for the other 3 models covered by the petition. These short periods indicate that the petitioner is expeditiously working toward producing fully compliant next generation DB9 and Vantage vehicles and that the exemption requested is just for a relatively short term. In addition, Aston Martin indicates that it is engineering the next generation DB9 replacement coupe to meet the requirements of FMVSS No. 226, *Ejection Mitigation,* a year earlier than required by that standard.[29] These factors are positive indicators of the effort Aston Martin plans to make during the exemption period to produce newly designed and fully compliant DB9 and Vantage models.

After considering Aston Martin's early installation of side air bags, the performance of the current side air bags and petitioner's progress toward producing the next generation DB9 and Vantage models, we believe that Aston Martin has tried to comply with the pole test requirement in good faith. Granting the petition on the pole test provides Aston Martin additional time to build on its efforts and achieve greater margins in passing the pole test, which the petitioner believes it needs to fully certify the vehicles to FMVSS No. 214.

A grant is consistent with the Safety Act. NHTSA searched the Fatality Analysis Reporting System (FARS) and the National Automotive Sampling System Crashworthiness Data System (NASS–CDS) data for years 2000 to the present. The FARS and NASS–CDS databases do not contain any instance in which Aston Martin vehicles were involved in side crashes resulting in injury or fatality. This information, and the fact that the DB9 and Vantage vehicles already have side impact air bags, support our finding that an exemption will have a negligible impact on motor vehicle safety.

Several factors support a finding that granting Aston Martin's exemption regarding the pole test is in the public interest. The number of vehicles at issue is 670. Further, we agree with Aston Martin that the relatively low number of miles driven by the vehicle because of its nature as a second vehicle will mean that the vehicle is less likely to be involved in a crash than a vehicle that is the primary means of transportation.

Further, denial of the request would remove a vehicle that is currently being sold in the U.S. market. Given that the DB9 and Vantage models comprise two of the four models produced by Aston Martin, the withdrawal of the models from the market would appreciably reduce Aston Martin's presence in the U.S. for a significant period.[30] Denial of the petition would create hardship for U.S. workers. NHTSA has given due consideration to the comments in the docket from affected Aston Martin dealers and their employees. A grant will avoid the possibility of job losses and other negative consequences at U.S. dealerships, such as possible closure of some servicing facilities which could negatively affect the ability of customers to service, maintain, and fix any problems with their vehicles in a timely manner.

We also conclude that Aston Martin demonstrated the requisite potential financial hardship. The petitioner has had a cumulative net loss position over the past several years. Denial of the petition would require Aston Martin to expend a large amount of capital to modify the DB9 and Vantage right before the model year change or would force the petitioner to cease sales of the vehicles in the U.S. Either outcome would cause substantial economic hardship to the petitioner.

After considering all of the relevant information, we have decided to grant Aston Martin a temporary exemption from the pole test of FMVSS No. 214 for the periods designated at the beginning of this document in the **DATES** section. However, the total number of vehicles that may be produced under this exemption is limited to 670.

We note that, as explained below, prospective purchasers of the exempted vehicles will be notified that the vehicles are exempted from the pole test of FMVSS No. 214. Under 49 CFR 555.9(b), a manufacturer of an exempted passenger car must securely affix to the windshield or side window of each exempted vehicle a label containing a statement that the vehicle conforms to all applicable FMVSSs in effect on the date of manufacture ''except for Standard Nos. [listing the standards by number and title for which an exemption has been granted] exempted pursuant to NHTSA Exemption No. _____.'' This label notifies prospective purchasers about the exemption and its subject. Under § 555.9(c), this information must also be included on the vehicle's certification label.

The text of § 555.9 does not expressly indicate how the required statement on the two labels should read in situations in which an exemption covers part, but not all, of a FMVSS. In this case, we believe that a statement that the vehicle has been exempted from Standard No. 214 generally, without an indication that the exemption is limited to the pole test provision, could be misleading. A consumer might incorrectly believe that the vehicle has been exempted from all of FMVSS No. 214's requirements. For this reason, we believe the two labels should read in relevant part, ''except for the pole test of Standard No. 214, Side Impact Protection, exempted pursuant to * * *.''

In accordance with 49 U.S.C. 30113(b)(3)(B)(i), Aston Martin is granted NHTSA Temporary Exemption No. EX 14–01, from the pole test requirement of 49 CFR 571.214 for the DB9 and Vantage models. The exemption is for no more than 670 vehicles and it shall remain effective for the periods designated at the beginning of this document in the DATES section.

b. MDB Requirement

Aston Martin also requested an exemption for the DB9 and Vantage vehicles from FMVSS No. 214's amended MDB test requirement. The basis for the request appears to be to

[28] Id.

[29] Aston Martin petition for temporary exemption, p. 11.

[30] NHTSA has traditionally found that the public interest is served by affording consumers the choice of a wider variety of motor vehicles.

basis for the request appears to be to allow the petitioner to avoid having [31]—

to test pole-exempted models for new MDB compliance—and possibly have to reengineer to achieve satisfactory results. Then, before the pole test exemption ended, Aston Martin would have to retest and reengineer these pole-exempted models for A SECOND TIME, in order to achieve both new MDB and Pole test compliance. NHTSA clearly sought to allow lead time to avoid this double burden. [Emphasis in text.]

The agency is denying Aston Martin's request to be exempted from the MDB requirement. We conclude that an exemption is not necessary on the basis of the information before it. Aston Martin submitted FMVSS No. 214 MDB test data [32] of a DB9 Volante convertible, Vantage coupe, and Vantage Roadster convertible tested with the mid-size adult male side impact dummy (SID) that FMVSS No. 214 had specified for use in the MDB test prior to the ES–2re. The data show that the vehicles appear to have passed the performance thresholds of FMVSS No. 214's MDB test by a wide margin with the SID.

In the final rule adopting the new MDB requirements into FMVSS No. 214 (requirements which use the ES–2re), NHTSA set forth findings indicating that manufacturers would likely not need to modify vehicles to meet the new MBD requirements when using the ES–2re in place of the SID.[33] Moreover, data indicate that vehicles that pass the MDB requirement using the SID will likely pass the MDB test using the ES–2re. The DB9 and Vantage models have easily passed the MDB test using the SID. Thus, we believe that data indicate the DB9 and Vantage models will pass the MDB test with the ES–2re and do not need a temporary exemption from the new MDB requirement. Accordingly, NHTSA is denying petitioner's request for an exemption from the new MDB requirement due to an absence of information showing such an exemption is needed.

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.95.

Dated: October 22, 2014.

David J. Friedman,

Deputy Administrator.

[FR Doc. 2014–25892 Filed 10–30–14; 8:45 am]

BILLING CODE 4910–59–P

[31] See Aston Martin petition for temporary exemption, p. 5.

[32] Accorded confidential treatment by NHTSA.

[33] NHTSA believed that vehicle modifications would likely result from adding the SID–IIs 5th percentile adult female dummy to the rear seat of the MDB test. See 72 FR at 51947. The SID–IIs is not used in tests of Aston Martin vehicles because the vehicles do not have a rear seat or one large enough to accommodate the SID–IIs.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35866]

Massachusetts Department of Transportation—Acquisition Exemption—Certain Assets of Housatonic Railroad Company, Inc.

The Massachusetts Department of Transportation (MassDOT), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Housatonic Railroad Company, Inc. (HRRC) and Maybrook Railroad Company (MRC) [1] certain railroad assets comprising a section of the ''Berkshire Line,'' extending from approximately milepost 50.0 at the Massachusetts-Connecticut border at Sheffield, Mass., to a connection with CSX Transportation, Inc., at approximately milepost 86.3 at Pittsfield, Mass., a distance of approximately 36.3 miles (the Line).

According to MassDOT, the acquisition of the Line is intended to facilitate the Commonwealth's long-term plans to restore regional passenger train service linking the Berkshire region of western Massachusetts with the New York City metropolitan area and the Northeast Corridor megalopolis. MassDOT states that the acquisition of the Line is one step in what MassDOT anticipates will be an involved, multi-step process that ultimately will lead to the establishment of a new railroad passenger service route in the Northeast. MassDOT states that, pursuant to a draft Purchase and Sale Contract, MassDOT has secured the right to purchase MRC's and HRRC's respective rights, title, and interest in the right-of-way, trackage, and other physical assets (such as signboard and fiber optics unrelated to the provision of common carrier freight service) associated with the Line, subject to HRRC's retained exclusive, irrevocable, perpetual, assignable, divisible, licensable, and transferable freight railroad operating easement. MassDOT also states that it will not acquire the right, nor will it have the ability, to provide rail common carrier service over the Line.[2] According to MassDOT, the agreements governing the subject asset sale and post-transaction railroad operations preclude MassDOT from interfering materially with the provision of railroad common carrier service over the Line. MassDOT, however, will be entitled in the future to initiate (itself, or through a designated third party) intercity passenger service and regional commuter rail service over the Line. MassDOT states that the proposed transaction does not involve any provision or agreement that would limit future interchange with a third-party connecting carrier.

MassDOT certifies that, because it will conduct no freight operations on the line segment being acquired, its revenues from freight operations will not result in the creation of a Class I or Class II carrier.

MassDOT also states that the parties expect to consummate the transaction on or about December 15, 2014, which is after the effective date of November 15, 2014.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than November 7, 2014 (at least seven days before the exemption becomes effective).

An original and ten copies of all pleadings, referring to Docket No. FD 35866, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: October 28, 2014.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2014–25938 Filed 10–30–14; 8:45 am]

BILLING CODE 4915–01–P

[1] MassDOT states that MRC is not a rail carrier for purposes of the present transaction and, therefore, is not listed in the proceeding caption.

[2] A motion to dismiss the notice of exemption on grounds that the transaction does not require authorization from the Board was concurrently filed with this notice of exemption. The motion to dismiss will be addressed in a subsequent Board decision.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. FD 35523]

CSX Transportation, Inc.—Joint Use—Louisville & Indiana Railroad Company, Inc.

AGENCY: Surface Transportation Board, DOT.

ACTION: Issuance of Supplemental Environmental Assessment; request for comments.

SUMMARY: On July 2, 2013, Applicants, CSX Transportation, Inc. (CSXT) and Louisville & Indiana Railroad Company, Inc. (L&I), filed an application with the Surface Transportation Board (Board) pursuant to 49 United States Code (U.S.C.) 11323 and 49 Code of Federal Regulations (CFR) part 1180. Applicants seek Board authority for CSXT to acquire from and jointly use with the L&I a perpetual, non-exclusive railroad operating easement over L&I's rail line. The subject L&I rail line extends from a connection with CSXT in Indianapolis, Indiana at milepost (MP) 4.0, to a connection with CSXT in Louisville, Kentucky at MP 110.5 (L&I Line). The joint use and easement acquisition are referred to as the Proposed Transaction. Both CSXT and L&I would continue to use the L&I Line. CSXT would pay L&I $10 million dollars for the operating easement and would spend between $70 and $90 million to improve the rail line to allow CSXT to move longer, faster, and heavier trains.

Currently, the L&I Line carries two to seven trains per day on the various sections of the line. Under the Proposed Transaction, CSXT would reroute some of its trains from current CSXT routes in the Indiana-Ohio-Kentucky region to a new route that includes the L&I Line in Indiana. The rerouting of these CSXT trains would add 13 to 15 trains per day over the various sections of the L&I Line.

In August 2013, the Board's Office of Environmental Analysis (OEA) issued a Draft Environmental Assessment (EA) that focused on the potential impacts of the proposed operational changes on the L&I Line, and also considered potential construction impacts associated with the extension of several rail line sidings and replacement of the Flatrock River Bridge, all on the L&I Line. During the public review and comment period on the Draft EA, OEA received comments that raised environmental issues that it had not addressed in the document. As a result, OEA decided to prepare a Supplemental EA focusing on the new environmental issues.

Today, OEA has issued the Supplemental EA, which is available on the Board's Web site, *www.stb.dot.gov,* by clicking ''Decisions'' under ''Quick Links,'' and locating the document under the service date of 10/31/2014. The Supplemental EA analyzes the potential operational impacts of CSXT moving additional trains on the following three CSXT rail lines: Indianapolis Terminal Subdivision—Louisville Secondary Branch, Indianapolis Line Subdivision, and Louisville Connection. The Supplemental EA also quantifies potential impacts to wetlands, floodplains, and forested areas that could result from extending rail line sidings and replacing the Flatrock River Bridge on the L&I Line, and includes a review of potential changes in wildlife strikes that could occur under the Proposed Transaction.

Additionally, the Indiana State Historic Preservation Office (SHPO) and OEA concur that (1) replacement of the Flatrock River Bridge would constitute an adverse effect on a historic property considered eligible for inclusion on the National Register of Historic Places; (2) avoidance of the adverse effect is not feasible if the L&I Line is to safely accommodate the modern rail traffic under the Proposed Transaction; (3) there appears to be no feasible alternative to bridge replacement and that documentation prior to removal would be an appropriate mitigation measure; (4) documentation completed by Applicants meets SHPO's standards; and (5) a Memorandum of Agreement (MOA) would memorialize the mitigation measures (i.e., documentation) and resolve adverse effects of the undertaking. OEA prepared a draft MOA that SHPO indicates it would sign as currently drafted. The draft MOA is located in Appendix I of the Supplemental EA and interested parties are invited to comment.

DATES: Interested parties are invited to submit written comments on the Supplemental EA by December 1, 2014 to assure full consideration. If you submitted comments on the Draft EA, you do not need to resubmit those comments. OEA will consider and respond to comments received on both the Draft EA and on today's Supplemental EA in the Final EA. The Board will issue a final decision on the proposed transaction after issuance of the Final EA.

Filing Environmental Comments: Comments submitted by mail should be addressed to: Dave Navecky, Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001, Attention: Environmental Filing, Docket No. FD 35523. Comments may also be submitted electronically on the Board's Web site, *www.stb.dot.gov,* by clicking on the ''E-FILING'' link on the home page and then selecting ''Environmental Comments.'' Please refer to *Docket No. FD 35523* in all correspondence, including e-filings, addressed to the Board.

FOR FURTHER INFORMATION CONTACT: Dave Navecky at the address above or by phone at 202–245–0294. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

By the Board, Victoria Rutson, Director, Office of Environmental Analysis.

Brendetta S. Jones,

Clearance Clerk.

[FR Doc. 2014–25924 Filed 10–30–14; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35864]

Escanaba & Lake Superior Railway Company—Lease and Operation Exemption—Rail Line of Wisconsin Central Ltd. in Menominee County, Mich., and Marinette County, Wis.

Escanaba & Lake Superior Railway Company (E&LS), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from Wisconsin Central Ltd., and to operate, pursuant to a non-exclusive lease agreement executed on September 30, 2014, approximately 2.8 miles of rail line that consists of the following segments: Track #129 at Menominee, in Menominee County, Mich., Track #270 at Marinette, Wis., and approximately 3,000 lineal feet of Track #115 at Marinette, in Marinette County, Wis. E&LS states that there are no mileposts on the subject line segments.

According to E&LS, the lease agreement between the parties will facilitate providing switching services to shippers on the line segments. E&LS states that the lease does not contain any provision or agreement that may limit future interchange of traffic with a third-party connecting carrier.

E&LS states that it expects to consummate the transaction on November 10, 2014. The earliest this transaction can be consummated is November 15, 2014, the effective date of this exemption (30 days after the verified notice of exemption was filed).

E&LS certifies that its projected annual revenues as a result of this transaction will not result in E&LS becoming a Class I or Class II rail carrier and will not exceed $5 million.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of

the exemption. Petitions to stay must be filed by November 7, 2014 (at least seven days prior to the date the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35864, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on applicant's representative, Keith G. O'Brien, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW., Suite 300, Washington, DC 20037.

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV.''*

Decided: October 28, 2014.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Brendetta S. Jones,

Clearance Clerk.

[FR Doc. 2014–25934 Filed 10–30–14; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 28, 2014.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before December 1, 2014 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8141, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–1295, or viewing the entire information collection request at *www.reginfo.gov.*

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0065.

Type of Review: Revision of a currently approved collection.

Title: Bank Secrecy Act Suspicious Activity Report (BSA–SAR).

Abstract: The statute generally referred to as the ''Bank Secrecy Act,'' Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332, authorizes the Secretary of the Treasury, among other things, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities, to protect against international terrorism, and to implement anti-money laundering programs and compliance procedures. Regulations implementing Title II of the BSA appear at 31 CFR Chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

The information collected on the ''report'' is required to be provided pursuant to 31 U.S.C. 5318(g), as implemented by FinCEN regulations found at 31 CFR 1020.320, 1021.320, 1022.320, 1023.320, 1024.320, 1025.320, 1026.320, 1029.320. The information collected under this requirement is made available to appropriate agencies and organizations as disclosed in FinCEN's Privacy Act System of Records Notice relating to BSA Reports.

Affected Public: Businesses or other for-profits; not-for-profit institutions.

Estimated Annual Burden Hours: 3,284,320.

Brenda Simms,

Treasury PRA Clearance Officer.

[FR Doc. 2014–25918 Filed 10–30–14; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 28, 2014.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before December 1, 2014 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8141, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–1295, or viewing the entire information collection request at *www.reginfo.gov.*

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0018.

Type of Review: Revision of a currently approved collection.

Title: Application for Basic Permit under the Federal Alcohol Administration Act.

Form: TTB F 5100.24.

Abstract: TTB Form 5100.24 is an application for a basic permit under the Federal Alcohol Administration Act (27 U.S.C. 201 et seq.) (FAA Act). Section 103 of the FAA Act (27 U.S.C. 203) requires that a person obtain a basic permit in order to engage in certain businesses, such as importing into the United States distilled spirits, wine or malt beverages; distilling spirits or producing wine; or purchasing for resale at wholesale distilled spirits, wine or malt beverages.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden Hours: 6,575.

OMB Number: 1513–0023.

Type of Review: Revision of a currently approved collection.

Title: Environmental Information and Supplemental Information on Water Quality Consideration under 33 U.S.C. 1341(a).

Form: TTB F 5000.29, TTB F 5000.30.

Abstract: TTB uses TTB Form 5000.29 to comply with its responsibilities under 42 U.S.C. 4332, which is a provision of the National Environmental Policy Act. In general, this form is used to determine whether operations proposed by a person in connection with an application for a permit will have a significant environmental impact and, as a result, whether a formal environmental impact statement or an environmental permit is necessary for a proposed operation. TTB uses TTB Form 5000.30 to comply with its responsibilities under 33 U.S.C. 1341, which is a provision of the Clean Water

Act. TTB F 5000.30 is used to make a determination as to whether a certification or waiver by the applicable State Water Quality Agency is required under Section 21 of the Federal Water Pollution Control Act, as amended by the Clean Water Act (33 U.S.C. 1341(a)). Manufacturers that discharge a solid or liquid effluent into navigable waters submit this form.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden Hours: 2,115.

OMB Number: 1513–0047.

Type of Review: Extension of a currently approved collection.

Title: Distilled Spirits Records (TTB REC 5110/01) and Monthly Report of Production Operations.

Form: TTB F 5110.40.

Abstract: The information collected is used to account for proprietor's tax liability and adequacy of bond coverage, for protection of the revenue. The information also provides data to analyze trends in the industry, plan efficient allocation of field resources, and compile statistics for government economic analysis.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden Hours: 3,600.

OMB Number: 1513–0048.

Type of Review: Extension of a currently approved collection.

Title: Registration of Distilled Spirits Plants and Miscellaneous Requests and Notices and Distilled Spirits Plans.

Form: TTB F 5110.41.

Abstract: The information provided by the applicant assists TTB in determining the eligibility of the applicant to engage in certain operations and is needed to register the distilled spirits plant. This form is used by persons who wish to establish distilled spirits plant operations.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden Hours: 4,471.

Brenda Simms,

Treasury PRA Clearance Officer.

[FR Doc. 2014–25951 Filed 10–30–14; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 28, 2014.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before December 1, 2014 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8141, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–1295, or viewing the entire information collection request at *www.reginfo.gov.*

Departmental Offices

OMB Number: 1505–0218.

Type of Review: Extension of a currently approved collection.

Title: Grants to States for Low-Income Housing Projects in lieu of Tax Credits.

Abstract: Authorized under the American Recovery and Reinvestment Act (ARRA) (Pub. L. 111–5), the Department of the Treasury implemented several provisions of the Act, more specifically Division B—Tax, Unemployment, Health, State Fiscal Relief, and Other Provisions. Among these components is a program which requires Treasury to make payments, in lieu of a tax credit, to state housing credit agencies. State housing credit agencies use the funds to make subawards to finance the construction or acquisition and rehabilitation of qualified low-income buildings. The collection of information from the agencies is necessary to properly monitor compliance with program requirements.

Affected Public: State, local or tribal governments.

Estimated Annual Burden Hours: 57.

Brenda Simms,

Treasury PRA Clearance Officer.

[FR Doc. 2014–25945 Filed 10–30–14; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 28, 2014

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before December 1, 2014 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimates, or any other aspect of the information collections, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8141, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained by emailing *PRA@treasury.gov,* calling (202) 622–1295, or viewing the entire information collection request at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Number: 1545–1902.

Type of Review: Revision of a currently approved collection.

Title: Qualified Severance of a Trust for Generation-Skipping Transfer (GST) Tax Purposes.

Form: 706–GS(T).

Abstract: Form 706–GS(T) is used by a trustee to figure and report the tax due from certain trust terminations that are subject to the generation-skipping transfer (GST) tax. Where Form 706–GS(T) is used, the filer should attach a Notice of Qualified Severance to the return that clearly identifies the trust that is being severed and the new trusts created as a result of the severance. The Notice must also provide the inclusion ratio of the trust that was severed and the inclusion ratios of the new trusts resulting from the severance. The information collected will be used by the IRS to identify the trusts being severed and the new trusts created upon severance.

Affected Public: Individuals or households.

Estimated Annual Burden Hours: 1,352.

Brenda Simms,

Treasury PRA Clearance Officer.

[FR Doc. 2014–25956 Filed 10–30–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

ACTION: Notice; correction.

SUMMARY: The Department of the Treasury published a document in the **Federal Register** on October 24, 2014 (79 FR 63669), inviting comments on collections of information submitted to the Office of Management and Budget (OMB) for review. This document contained an incorrect office reference.

Correction

In the **Federal Register** of October 24, 2014, in FR Doc. 2014–25351, make the following corrections:

• Page 63669, in the second column, under **SUMMARY**: remove ''Currently, the Office of the Assistant Secretary for Financial Markets, within the Department of the Treasury, is soliciting comments concerning the New Issue Bond Program and Temporary Credit and Liquidity Program.''

Dated: October 28, 2014.

Brenda Simms,

Treasury PRA Clearance Officer.

[FR Doc. 2014–25959 Filed 10–30–14; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Progressive Northwestern Insurance Company

AGENCY: Bureau of the Fiscal Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 2 to the Treasury Department Circular 570, 2014 Revision, published July 1, 2014, at 79 FR 37398.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued under 31 U.S.C. 9305 to the following company:

Progressive Northwestern Insurance Company (NAIC# 42919) BUSINESS ADDRESS: P.O. Box 89490, Cleveland, OH 44101–6490. PHONE: (440) 461–5000. UNDERWRITING LIMITATION b/: $37,157,000. SURETY LICENSES c/: AK, CA, CT, DC, HI, IN, IA, KS, LA, MD, MS, MT, NV, NM, NY, OH, OR, SD, UT, VA, WA, WV. INCORPORATED IN: Ohio.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570 (''Circular''), 2014 Revision, to reflect this addition.

Certificates of Authority expire on June 30th each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (*see* 31 CFR part 223). A list of qualified companies is published annually as of July 1st in the Circular, which outlines details as to the underwriting limitations, areas in which companies are licensed to transact surety business, and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Bureau of the Fiscal Service, Financial Accounting and Services Branch, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: October 23, 2014.

Kevin McIntyre,

Manager, Financial Accounting and Services Branch.

[FR Doc. 2014–25939 Filed 10–30–14; 8:45 am]

BILLING CODE 4810–35–P



FEDERAL REGISTER

Vol. 79 Friday,
No. 211 October 31, 2014

Part II

Department of Education

34 CFR Parts 600 and 668
Program Integrity: Gainful Employment; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 600 and 668

RIN 1840–AD15

[Docket ID ED–2014–OPE–0039]

Program Integrity: Gainful Employment

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends 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: These regulations are effective July 1, 2015.

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 at: *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: The 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 establishes: (1) An accountability framework for GE programs that defines what it means to prepare students for gainful employment in a recognized occupation by establishing measures by which the Department will evaluate whether a GE program remains eligible for title IV, HEA program funds, and (2) a transparency framework that will increase the quality and availability of information about the outcomes of students enrolled in GE programs. Better outcomes information will 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 will enable better protection of the Federal investment in these programs; and institutions, by providing them with meaningful information that they can use to help improve student outcomes in their programs.

The accountability framework defines what it means to prepare students for gainful employment by establishing measures that 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 will need to make improvements during the transition period we establish in the regulations.

The transparency framework will establish reporting and disclosure requirements that increase the transparency of student outcomes of GE programs so that students, prospective students, and their families have accurate and comparable information to help them make informed decisions about where to invest their time and money in pursuit of a postsecondary degree or credential. Further, this information will provide the public, taxpayers, and the Government with relevant information to better safeguard the Federal investment in these programs. Finally, the transparency framework will provide institutions with meaningful information that they can 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 amends 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 ''Section 668.401 Scope and Purpose'' and in the notice of proposed rulemaking (NPRM) published on March 25, 2014 (79 FR 16426). 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 certain educational programs must provide training that prepare students for gainful employment in a recognized occupation in order for those programs to be eligible for title IV, HEA program funds—the requirement that the Department defines through these 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, together with the provisions in the HEA, 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; require the institution to

disclose information about the program to students, prospective students, and their families, the public, taxpayers, and the Government, and institutions; and establish certification requirements regarding an institution's GE programs.

As also explained in more detail in ''Section 668.401 Scope and Purpose'' and the NPRM, 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 regulations is also informed by the legislative history of the provisions of the HEA, as discussed in the NPRM, 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) (referred to in this document as ''*APSCU* v. *Duncan*). 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 regulations establish an accountability framework and a transparency framework.

The accountability framework, among other things, creates a certification process by which an institution establishes a GE program's eligibility for title IV, HEA program funds, as well as a process by which the Department determines whether a program remains eligible. First, an institution establishes the eligibility of a GE program by certifying, among other things, that the program is included in the institution's accreditation and satisfies any applicable State or Federal program-level accrediting requirements and State licensing and certification requirements for the occupations for which the program purports to prepare students to enter. This requirement will 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 or certification requirements necessary to secure the jobs associated with the training.

Under the accountability framework, we also establish the debt-to-earnings (D/E) rates measure [1] that will be used to determine whether a GE program remains eligible for title IV, HEA program funds. The D/E rates measure evaluates the amount of debt (tuition and fees and books, equipment, and supplies) 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 regulations establish the standards by which the program will 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 regulations, to pass the D/E rates measure, the GE program must have a discretionary income rate [2] less than or equal to 20 percent or an annual earnings rate [3] less than or equal to 8 percent. The regulations also establish a zone for GE programs that have a discretionary income rate greater than 20 percent and less than or equal to 30 percent or an annual earnings rate greater than 8 percent and less than or equal to 12 percent. GE programs with a discretionary income rate over 30 percent and an annual earnings rate over 12 percent will fail the D/E rates measure. Under the regulations, a GE program becomes 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 that are in the zone or failing for four consecutive years. We establish 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 safeguard the Federal investment in the program.

The regulations also establish procedures for the calculation of the D/E rates and for challenging the information used to calculate the D/E rates and appealing the determination. The regulations also establish a transition period for the first seven years after the regulations take effect to allow institutions to pass the D/E rates measure by reducing the loan debt of currently enrolled students.

For a GE program that could become ineligible based on its D/E rates for the next award year, the regulations require the institution to warn students and prospective students of the potential loss of eligibility for title IV, HEA program funds and the implications of such loss of eligibility. Specifically, institutions would be required to provide warnings to enrolled students that describe, among other things, the options available to continue their education at the institution if the program loses its eligibility and whether the students will be able to receive a refund of tuition and fees. The regulations also provide that, for a GE program that loses eligibility or for any failing or zone program that is discontinued by the institution, the loss of eligibility is for three calendar years.

These provisions will: Ensure that institutions have a meaningful opportunity and reasonable time to improve their programs for a period of time after the regulations take effect, and ensure that those improvements are 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 are made, how institutions can ensure the accuracy of information used in the calculations, and the consequences of failing the D/E rates measure and losing eligibility.

In addition, the regulations establish a transparency framework. First, the regulations establish reporting requirements, under which institutions will report information related to their GE programs to the Secretary. The reporting requirements will 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 regulations require institutions to disclose relevant information and data about the GE programs through a disclosure template developed by the Secretary. The disclosure requirements will help ensure students, prospective students, and their families, the public, taxpayers, and the Government, and institutions have access to meaningful and comparable information about student outcomes and the overall performance of GE programs.

Costs and Benefits: There are two primary benefits of the regulations. Because the regulations establish an accountability framework that assesses program performance we expect

[1] Please see ''Section 668.404 Calculating D/E Rates'' for details about the calculation of the D/E rates.

[2] Please see § 668.404(a)(1) for the definition of the discretionary income rate.

[3] Please see § 668.404(a)(2) for the definition of the annual earnings rate.

students, prospective students, taxpayers, and the Federal Government to receive a better return on the title IV, HEA program funds. The regulations also establish a transparency framework which will improve market information that will 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 will also gain relevant and useful information about GE programs, allowing them to evaluate their investment in these programs. Institutions will largely bear the costs of the regulations: Paperwork costs of 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. *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 regulations.

On March 25, 2014, the Secretary published the NPRM for these regulations in the **Federal Register** (79 FR 16426). In the preamble of the NPRM, we discussed on pages 16428–16433, the background of the regulations, the relevant data available, and the major changes proposed in that document. Terms used but not defined in this document, for example, 2011 Prior Rule and 2011 Final Rules, have the meanings set forth in the NPRM. The final regulations contain a number of changes from the NPRM. We fully explain the changes in the *Analysis of Comments and Changes* section of the preamble that follows.

Public Comment: In response to our invitation in the NPRM, we received approximately 95,000 comments on the proposed regulations. We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address technical or other minor changes.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the regulations since publication of the NPRM follows.

Section 668.401 Scope and Purpose

Comments: A number of commenters stated that, in promulgating the regulations, the Department exceeds its delegated authority to administer programs under the HEA. Some commenters asserted that the legislative history of the gainful employment provisions in the HEA does not support the Department's regulatory action to define gainful employment and that the Department gave undue weight to testimony presented to Congress at the time the gainful employment provisions were enacted. Some commenters stated that Congress did not intend for the Department to measure whether a program leads to gainful employment based on debt or earnings.

Several commenters argued that, even if the Department has the legal authority, the issues addressed by the regulations should be addressed instead as a part of HEA reauthorization or by other legislative action. One commenter contended that members of Congress have asked the Department to refrain from regulating on gainful employment programs pending reauthorization of the HEA and that the proposed regulations constitute a usurping of legislative authority.

Other commenters asserted that identifying educational programs in the career training sector that do not prepare students for gainful employment and terminating their eligibility for title IV, HEA program funds is mandated by the HEA.

Discussion: The Department's statutory authority for this regulatory action is derived primarily from three sources. First, sections 101 and 102 of the HEA define ''eligible institution'' to include an institution 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). These statutory provisions establish the requirement that certain educational programs must provide training that prepares students for gainful employment in a recognized occupation in order for those programs to be eligible for title IV, HEA program funds—the requirement that the Department seeks to define through the 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 provisions, together with the provisions in the HEA regarding GE programs, authorize the Department to promulgate regulations that: Set measures to determine the eligibility of GE programs for title IV, HEA program funds; require institutions to report information about GE programs to the Secretary; require institutions to disclose information about GE programs to students, prospective students, and their families, the public, taxpayers, and the Government, and institutions; and establish certification requirements regarding an institution's GE programs.

Third, the Department's authority for establishing 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 about 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 U.S. District Court for the District of Columbia confirmed the Department's authority to regulate gainful employment programs in *Association of Private Sector Colleges and Universities (APSCU)* v. *Duncan,* 870 F.Supp.2d 133 (D.D.C. 2012), and 930 F.Supp.2d 210 (D.D.C. 2013). These rulings arose out of a lawsuit brought by APSCU challenging the Department's 2010 and 2011 gainful employment regulations. In that case, the court reached several conclusions about the Department's rulemaking authority to define eligibility requirements for gainful employment programs that have informed and framed the Department's exercise of that authority through this rulemaking. Notably, the court agreed with the Department that the Secretary has broad authority to make, promulgate, issue, rescind, and amend the rules and regulations governing 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 of whether the Department's regulatory effort to define the gainful employment requirement falls within its statutory authority, the court found that the Department's actions were within its statutory

authority to define the gainful employment requirement. Specifically, the court concluded that the phrase ''gainful employment in a recognized occupation'' is ambiguous; in enacting a requirement that used that phrase, Congress delegated interpretive authority to the Department; and the Department's regulations were a reasonable interpretation of an ambiguous statutory command. *APSCU* v. *Duncan,* 870 F.Supp.2d at 146–49. The court also upheld the disclosure requirements set forth by the Department in the 2011 Final Rule, which are still in effect, rejecting APSCU's challenge and finding that these requirements ''fall comfortably within [the Secretary's] regulatory power,'' and are ''not arbitrary or capricious.'' *Id.* at 156.

Contrary to the claims of some commenters, the Department's authority to promulgate regulations defining the gainful employment requirement and using a debt and earnings measure for that purpose is also supported by the legislative history of the statutory provisions regarding gainful employment programs. 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. Allowing these students to borrow was expected to neither unduly burden the students nor pose ''a poor financial risk'' to taxpayers. 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 (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 that require the Federal Government to reimburse 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). We therefore disagree that the legislative history does not support the Department's action here nor do we see any basis, and commenters have provided none, for us to question that history or the information Congress relied upon in enacting the statutory provisions.

We appreciate that Congress may have a strong interest in addressing the issues addressed by these regulations in the reauthorization of the HEA or other legislation and we look forward to working with Congress on its legislative proposals. However, we do not agree that the Department should not take, or should defer, regulatory action on this basis until Congress reauthorizes the HEA or takes other action. In light of the numerous concerns about the poor outcomes of students attending many GE programs, and the risk that poses to the Federal interest, the Department must proceed now in accordance with its statutory authority, as delegated by Congress, to protect students and taxpayers.

Changes: None.

Comments: Some commenters suggested that the phrase ''to prepare students for gainful employment'' is unambiguous and therefore not subject to further interpretation. Commenters stated that the Department's interpretation of the phrase is incorrect because it is contrary to the ordinary meaning of the phrase ''gainful employment,'' to congressional intent, and to the rules of statutory construction. These commenters asserted that the dictionary definition of the phrase does not comport with the Department's proposed definition or the definition of the term ''gainful employment'' in other provisions of the HEA. Commenters also stated that Congress has not made any changes to the HEA triggering a requirement by the Secretary to define the term ''gainful employment'' and claimed that the term cannot now be defined since Congress left it undisturbed during its periodic reauthorizations of the HEA.

Some commenters expressed the view that the framework of detailed program requirements under title IV of the HEA, including institutional cohort default rates, institutional disclosure requirements, restrictions on student loan borrowing, and other financial aid requirements, prevents the Department from adopting debt measures to determine whether a gainful employment program is eligible to receive title IV, HEA program funds.

One commenter claimed that the Department has previously defined the phrase ''gainful employment in a recognized occupation'' in the context of conducting administrative hearings and argued that the Department did not adequately explain in the NPRM why it was departing from its prior use of the term.

Discussion: As the court found in *APSCU* v. *Duncan,* Congress has not spoken through legislative action to the precise question at issue here: Whether the statutory requirement that programs providing vocational training ''prepare students for gainful employment in a recognized occupation'' may be measured by reference to students' ability to repay their loans. Congress did not provide a definition for the phrase ''gainful employment'' or ''gainful employment in a recognized occupation'' in either the statute or its legislative history. Thus, the phrase is ambiguous and Congress left further definition of the phrase to the Department.

There also is no common meaning of the phrase, contrary to the assertion of the commenters. The commenters' argument that ''gainful employment'' has one meaning in all circumstances—''a job that pays''—is belied by other dictionaries that define ''gainful'' as ''profitable.'' *See, e.g.,* Webster's New Collegiate Dictionary 469 (1975). ''Profitable'' means the excess of returns over expenditures, or having something left over after one's expenses are paid.

Id. at 919. This definition supports the idea embodied in the regulations that ''gainful employment in a recognized occupation'' is not just any job that pays a nominal amount but a job that pays enough to cover one's major expenses, including student loans.

Nor is there a common definition of the phrase in the HEA. Although Congress used the words ''gainful employment'' in other provisions of the HEA, the operative phrase for the purpose of these regulations is ''gainful employment in a recognized occupation.'' The modifying words ''in a recognized occupation'' qualify the type of job for which students must be prepared. ''A recognized occupation'' suggests an established occupation, not just any job that pays. In addition, the phrase ''gainful employment'' means different things based on its context in the statute. For example, the requirement that a recipient of a graduate fellowship not be ''engaged in gainful employment, other than part-time employment related to teaching, research, or a similar activity'' (20 U.S.C. 1036(e)(1)(B)(ii)) has a different meaning than the requirement that vocationally oriented programs ''prepare students for gainful employment in a recognized occupation,'' just as both requirements necessarily have a different meaning than a statutory requirement that a program for students with disabilities focus on skills that lead to ''gainful employment'' (20 U.S.C. 1140g(d)(3)(D)).

As the court stated in *APSCU* v. *Duncan,* ''[t]he power of an administrative agency to administer a congressionally created . . . program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress. The means of determining whether a program 'prepare[s] students for gainful employment in a recognized occupation' is a considerable gap, which the Department has promulgated rules to fill.'' *APSCU* v. *Duncan,* 870 F. Supp. 2d 133, 146 (D.D.C. 2012) (internal quotations and citations omitted).

The commenters are incorrect in their assertion that the HEA's provisions on loan default rates, student borrowing, and other financial aid matters prevent the Department from regulating on what it means for a program to provide training that prepares students for gainful employment in a recognized occupation. The Department's regulations are not an attempt to second guess Congress or depart from a congressional plan but rather will fill a gap that Congress left in the statute—defining what it means to prepare a student for gainful employment in a recognized occupation—in a manner consistent with congressional intent. The regulations supplement and complement the statutory scheme. And, although there are differences between the regulations and other provisions, such as those regarding institutional cohort default rates (CDR), the regulations do not fundamentally alter the statutory scheme.

Rather than conflicting, as asserted by commenters, the CDR and GE regulations complement each other. Congress enacted the CDR provision as ''one'' mechanism—not the sole, exclusive mechanism—for dealing with abuses in Federal student aid programs. *See* H.R. Rep. No. 110–500 at 261 (2007) (''Over the years, *a number of provisions* have been enacted under the Higher Education Act to protect the integrity of the federal student aid programs. *One* effective mechanism was to restrict federal loan eligibility for students at schools with very high cohort loan default rates'' (emphasis added).) Congress did not, in enacting the CDR provision or at any other time, limit the Department's authority to promulgate regulations to define what it means to ''prepare students for gainful employment in a recognized occupation.'' *Compare* 20 U.S.C. 1015b(i), concerning student access to affordable course materials (''No regulatory authority. The Secretary shall not promulgate regulations with respect to this section.''). Nor did it alter this existing statutory language when it passed the CDR provision. Indeed, the court in *APCSU* v. *Duncan* specifically addressed the issue of whether the CDR provisions would preclude the Department from effectuating the gainful employment requirement by relying on other debt measures at the programmatic level and concluded that the ''statutory cohort default rule . . . does not prevent the Department from adopting the debt measures.'' *APSCU* v. *Duncan,* 870 F. Supp. 2d at 147 (citing to *Career Coll. Ass'n* v. *Riley,* 74 F.3d 1265, 1272–75 (D.C. Cir. 1996), where the DC Circuit held that the Department's authority to establish '' 'reasonable standards of financial responsibility and appropriate institutional capability' empowers it to promulgate a rule that measures an institution's administrative capability by reference to its cohort default rate—even though the administrative test differs significantly from the statutory cohort default rate test.'')

The GE regulations are also consistent with other provisions of the HEA aimed at curbing abuses in the title IV, HEA programs. Prompted by a concern that its enormous commitment of Federal resources would be used to provide financial aid to students who were unable to find jobs that would allow them to repay their loans, Congress enacted several statutory provisions to ensure against abuse. Congress specified that participating schools cannot ''provide any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments or financial aid to any persons or entities engaged in any student recruiting or admission activities or in making decisions regarding the award of student financial assistance.'' 20 U.S.C. 1094(a)(20). ''The concern is that recruiters paid by the head are tempted to sign up poorly qualified students who will derive little benefit from the subsidy and may be unable or unwilling to repay federally guaranteed loans.'' *United States ex rel. Main* v. *Oakland City Univ.,* 426 F.3d 914, 916 (7th Cir. 2005). To prevent schools from improperly inducing people to enroll, Congress prohibited participating schools from engaging in a ''substantial misrepresentation of the nature of its educational program, its financial charges, or the employability of its graduates.'' 20 U.S.C. 1094(c)(3)(A). Congress also required a minimum level of State oversight of eligible schools.

In sum, the GE regulations simply build upon the Department's regulation of institutions participating in the title IV, HEA programs and the myriad ways in which the Department, as authorized by Congress, protects students and taxpayers from abuse of the Federal student aid program.

We further disagree that the Department has previously defined what ''gainful employment in a recognized occupation'' means for the purpose of establishing accountability and transparency with respect to GE programs and their outcomes. In support of this argument, the commenters rely on a 1994 decision of an administrative law judge regarding whether a program in Jewish culture prepared students enrolled in the program for gainful employment in a recognized occupation. As the district court noted, the administrative law judge did not fully decide what it means to prepare a student for gainful employment in a recognized occupation but merely stated that any preparation must be for a specific area of employment. *APSCU* v. *Duncan,* 870 F. Supp. 2d 133, 150 (D.D.C. 2012). Further, the Department did not depart from the administrative law judge's interpretation in the 2011 Final Rules, as the court in *APSCU* v. *Duncan* agreed. *See id.* Nor is the Department

departing from that interpretation with these regulations.

Changes: None.

Comments: Some commenters claimed that the proposed regulations violate the HEA because they would require an institution to ensure a student is gainfully employed in a recognized occupation. The commenters stated that the HEA requires only that vocational schools ''prepare'' students for gainful employment in a recognized occupation and not that they ensure they obtain such employment. Commenters also stated that the HEA does not hold institutions responsible for a student's post-graduation employment choices but the proposed regulations would. The commenters stated that under the proposed regulations, an institution would be penalized if a student chose not to seek gainful employment after graduation or chose to seek employment in another field that did not result in sufficient earnings to repay their debt.

Discussion: The commenters ignore the legislative history demonstrating that, in enacting the gainful employment statutory provisions, Congress intended that students who borrowed Federal funds to obtain such training would be able to repay the debt incurred because they would have been prepared for gainful employment in a recognized occupation. Contrary to commenters' claims, the D/E rates measure the Department adopts here neither requires a school to ensure that an individual student obtains employment nor holds schools responsible for a student's career decisions. Rather, the measure evaluates whether a particular cohort of students completing a program has received training that prepares those students for gainful employment such that they are able to repay their student loans, not whether each student who completed the program obtains a job that enables that student to pay back his or her loans.

Changes: None.

Comments: One commenter asked how the Department defines ''recognized occupation.'' According to the commenter, this question is of particular concern for schools offering cosmetology programs. The commenter said that there are many individuals who use their cosmetology degrees to obtain employment in a field that is indirectly related, such as beauty school administration. The commenter stated that some companies frequently hire beauty school graduates to work in their financial and student advisor offices; these students do not possess degrees in finance, career counseling, or administration, but their background and education in cosmetology has been found to be sufficient to properly fulfill the job requirements. The commenter asked whether these indirectly related jobs would be considered a recognized occupation.

Discussion: The proposed and final regulations in § 600.2 define recognized occupation as an occupation that is either (a) identified by a Standard Occupational Classification (SOC) code established by OMB or an Occupational Information Network O*Net-SOC established by the Department of Labor or (b) determined by the Secretary in consultation with the Secretary of Labor to be a recognized occupation. Institutions are expected to identify a CIP code for their programs that represents the occupations for which the institution has designed its program. The Bureau of Labor Statistics (BLS) has developed a crosswalk that identifies the occupations (SOCs) associated with the education and training provided by a program (*www.onetonline.org/crosswalk*), and these would be ''recognized occupations'' for the purposes of these regulations. However, regardless of whether an occupation is associated with a particular program so long as the occupation is identified by a SOC code, it is a recognized occupation.

Changes: None.

Comments: Some commenters claimed that the proposed regulations would require institutions to lower their tuition in order to meet the D/E rates measure. Referencing a House of Representatives committee report from 2005, the commenter stated that this was contrary to Congress' decision not to regulate institutions' tuition. One commenter stated that the proposed regulations attempt to address the costs of deferments and other repayment options, but that Congress has already created mechanisms to address the issue of increasing student debt load and rising tuition costs. The commenter claimed that the proposed regulations would require institutions to reduce tuition and therefore are contrary to congressional action in this area.

Discussion: The regulations do not require institutions to lower their tuition. Reducing tuition and fees may be one way for an institution to meet the D/E rates measure but it is not the only way. Institutions can also meet the D/E rates measure by having high-quality program curricula and engaging in robust efforts to place students.

The regulations also are not contrary to Congress' findings in H.R. Rep. 109–231. That report states ''[i]t is the Committee's position that . . . the Federal Government does not have the ability *to set tuition and fee rates* for colleges and universities.'' H.R. Rep. 109–231, at 159 (emphasis added). Given that these regulations do not ''set tuition and fee rates for colleges and universities,'' there is no conflict with the congressional findings in this report.

Changes: None.

Comments: Several commenters contended that the Department failed to satisfy its obligations under the Administrative Procedure Act in conducting negotiated rulemaking. Specifically, the commenters asserted that representatives of for-profit institutions and business and industry, as well as representatives from law, medical, and other professional schools, were not adequately represented on the negotiating committee. They further argued that the Department did not listen to the views of negotiators during the negotiated rulemaking sessions. Some commenters stated that the Department did not conduct the negotiations in good faith because the negotiation sessions were held for seven days when other negotiated rulemaking sessions have taken longer.

Discussion: The negotiated rulemaking process ensures that a broad range of interests is considered in the development of regulations. Specifically, negotiated rulemaking seeks to enhance the rulemaking process through the involvement of all parties who will be significantly affected by the topics for which the regulations will be developed. Accordingly, section 492(b)(1) of the HEA, 20 U.S.C. 1098a(b)(1), requires the Department to choose negotiators from groups representing many different constituencies. The Department selects individuals with demonstrated expertise or experience in the relevant subjects under negotiation, reflecting the diversity of higher education interests and stakeholder groups, large and small, national, State, and local. In addition, the Department selects negotiators with the goal of providing adequate representation for the affected parties while keeping the size of the committee manageable. The statute does not require the Department to select specific entities or individuals to be on the committee. As there was a committee member representing each of for-profit institutions and business and industry interests, we do not agree that these groups were not adequately represented on the committee. We also do not agree that specific areas of training, such as law and medicine, required specific representation, as institutions with such programs were represented at the sector level.

While it is to be expected that some committee members will have interests that differ from other members and that consensus is not always reached, as in the case of these regulations, the negotiated rulemaking process is intended to provide stakeholders an opportunity to present alternative ideas, to identify areas where compromises can be reached, and to help inform the agency's views. In the negotiated rulemaking sessions for these regulations, there was robust discussion of the draft regulations, negotiators including those representing the commenters submitted a number of proposals for the committee to consider, and, as we described in detail in the NPRM, the views and suggestions of negotiators informed the proposed and these final regulations.

With respect to the length of the negotiations, the HEA does not require negotiated rulemaking sessions to be held for a minimum number of days. Seven days was a sufficient amount of time to conduct these negotiations.

Changes: None.

Comments: A number of commenters stated that the proposed regulations were arbitrary and capricious and therefore violate the Administrative Procedure Act. Commenters raised this concern both generally and with respect to specific elements of the proposed regulations. For example, several commenters argued that the thresholds for the D/E rates measure lack a reasoned basis. As another example, some commenters claimed that the Department was arbitrary and capricious in proposing regulations that were different from those promulgated in the 2011 Final Rules.

Discussion: We address commenters' arguments with respect to specific provisions of the regulations in the sections of this preamble specific to those provisions. However, as a general matter, in taking this regulatory action, we have considered relevant data and factors, considered and responded to comments, and articulated a reasoned basis for our actions. *Marsh* v. *Oregon Natural Res. Council,* 490 U.S. 360, 378 (1989); *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 43 (1983); *see also Pub. Citizen, Inc.* v. *Fed. Aviation Admin.,* 988 F.2d 186, 197 (D.C. Cir. 1993); *PPL Wallingford Energy LLC* v. *FERC,* 419 F.3d 1194, 1198 (D.C. Cir. 2005). Further, for those provisions of the regulations that differ from those established in the 2011 Final Rules, we have provided a reasoned basis for our departure from prior policy. *Motor Vehicle,* 463 U.S. at 57; *see also Williams Gas Processing–Gulf Coast Co., L.P.* v. *FERC,* 475 F.3d 319, 326 (D.C. Cir. 2006); *Rust* v. *Sullivan,* 500 U.S. 173, 187 (1991); *F.C.C.* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 514–516 (2009); *Investment Co. Inst.* v. *Commodity Futures Trading Comm'n,* 720 F.3d 370, 376 (D.C. Cir. 2013).

Changes: None.

Comments: Various commenters argued that the regulations are impermissibly retroactive. These commenters contended that the accountability metrics reflect historical performance and not current program performance and, at least initially, would apply standards to measure a program's performance at a time when the standards were not in effect. Commenters suggested that this approach deprives institutions of any ability to make improvements that would be reflected in those programs' initial D/E rates. Some commenters noted that this issue is more significant for programs that are of longer duration, as there will be a longer period after implementation of the regulations during which the D/E rates are based on student outcomes that predate the regulations. Some commenters also noted that the manner in which program performance is measured could result in programs being required to provide warnings to students that would depress enrollment at times when the program had already been improved.

Commenters proposed that the Department lengthen the transition period to avoid any sanctions against low-performing programs based upon periods when the new regulations were not in effect. Other commenters urged that some mechanism be used to take more recent program performance into consideration.

Discussion: Eligibility determinations based on past program performance, even performance that predates the effective date of the regulations, does not present a legal impediment to these regulations. A law is ''not retroactive merely because the facts upon which its subsequent action depends are drawn from a time antecedent to the enactment.'' *Reynolds* v. *United States,* 292 U.S. 443, 449 (1934). This principle applies even when, as is the case with these regulations, the statutes or regulations at issue were not in effect during the period being measured. *Career College Ass'n* v. *Riley,* No. 94–1214, 1994 WL 396294 (D.D.C. July 19, 1994). This principle has been confirmed in the context of the Department's use of institutional cohort default rates. *Ass'n of Accredited Cosmetology Schools* v. *Alexander,* 979 F.2d 859, 860–62 (D.C. Cir. 1992); *Pro Schools Inc.* v. *Riley,* 824 F.Supp. 1314 (E.D. Wis. 1993). The courts in these matters found that measuring the past default rates of institutions was appropriate because the results would not be used to undo past eligibility, but rather, to determine future eligibility. *See, e.g., Ass'n of Accredited Cosmetology Schools,* 979 F.2d at 865. As with the institutional cohort default rate requirements, as long as it is a program's future eligibility that is being determined using the D/E rates measure, the assessment can be based on prior periods of time. Indeed, the court in *APSCU* v. *Duncan* rejected this retroactivity argument with respect to the 2011 Prior Rule. 870 F. Supp. 2d at 151–52.

We discuss the comments relating to the transition period under ''Section 668.404 Calculating D/E Rates.''

Changes: None.

Comments: We received many comments in support of the proposed regulations, including both general expressions of support and support with respect to specific aspects of the proposed regulations. Commenters stated that the proposed regulations would help ensure that more students have the opportunity to enter programs that prepare them for gainful employment and that students would be better positioned to repay their educational loans. Several commenters also believed that the regulations will help curtail the abusive recruiting tactics that were revealed by the Senate Permanent Subcommittee on Investigations and the Senate Committee on Health, Education, Labor and Pensions (HELP) in 2012. One commenter expressed support on the basis that, by preventing students from enrolling in low-performing programs, the regulations would curb predatory recruiting practices that target veterans in particular.

Discussion: We appreciate the support of these commenters.

Changes: None.

Comments: We received a number of comments suggesting that the regulations were not sufficiently strong to ensure programs prepare students for gainful employment and to protect students. One commenter argued that the regulations set a low bar for compliance and would do little to stem the flow of Federal dollars to poorly performing institutions. This commenter argued that Federal investment in a program carries an implied endorsement that the program has been ''approved'' and that the Department has determined it worthwhile. Similarly, several commenters advocated for stronger regulations that close loopholes by

which programs could ''game'' the accountability metrics.

Discussion: We disagree that the regulations set too low a bar for compliance. We believe that the accountability framework strikes a reasonable balance between holding institutions accountable for poor student outcomes and providing institutions the opportunity to improve programs that, if improved, may offer substantial benefits to students and the public.

The Department acknowledges the concern among several commenters about potential loopholes in the proposed accountability metrics and notes that many of these concerns related to program cohort default rates, which in the final regulations will not be used as an accountability metric but, rather, will be used only as a potential disclosure item. We address the commenters' other specific concerns in the sections of the preamble to which they pertain. As a general matter, however, although we cannot anticipate every situation in which an institution could potentially evade the intent of the regulations, we believe the regulations will effectively hold institutions accountable for a program's student outcomes and make those outcomes transparent to students, prospective students, the public, taxpayers, and the Government.

Changes: None.

Comments: Several commenters argued that the regulations create overly burdensome reporting and compliance requirements that will be an enormous drain on programs and result in higher tuition costs. One commenter asserted that the regulations add 1.65 million additional hours of workload for institutions. Commenters contended that the regulations would harm community colleges by creating heavy regulatory and financial burdens and stifle innovation and employment solutions for both students and businesses. One commenter argued that, to avoid the administrative burden created by the regulations, foreign institutions with a small number of American students would likely cease to participate in the title IV, HEA programs.

Discussion: We appreciate the commenters' concerns. Throughout the regulations, we have balanced our interest in minimizing burden on institutions with our interest in achieving our dual objectives of accountability and transparency. The reporting and disclosure requirements are integral to achieving those goals. We discuss concerns about burden throughout this preamble, including in ''Section 668.411 Reporting Requirements for GE Programs,'' ''Section 668.412 Disclosure Requirements for GE Programs,'' and *Paperwork Reduction Act of 1995.*

Changes: None.

Comments: Commenters expressed several concerns about specific elements of the definition of ''gainful employment (GE) program.'' Commenters recommended that graduate programs be excluded from the definition and, specifically, from evaluation under the accountability metrics. One commenter suggested that the HEA framework relating to gainful employment programs was established at a time when most qualifying programs were short term and job focused. The commenter asserted that it is unfair to apply this framework to graduate-level programs where the same program, for example, a Masters of Business Administration program, may be offered by a for-profit institution—and qualify as a GE program—and by a public institution—but not qualify as a GE program. Another commenter argued that a stated purpose of the regulations is to focus on the employability of students enrolled in entry-level postsecondary programs, and that evaluating graduate programs, where there are not the same employment challenges and return-on-investment considerations, would be inconsistent with this purpose. One commenter asserted that based on its analysis, graduate programs would be minimally affected by the proposed metrics and therefore should be exempt from them. Commenters also argued that graduate students are mature students and often experienced workers familiar with the debt and earnings potential of various educational and career paths who do not require the protections offered by the regulations. Commenters argued that the D/E rates measure and program Cohort Default Rate (pCDR) [4] measure are not reliable metrics for many graduate programs because, according to the commenters, there tends to be a longer lag in time between when students enter these programs and when they experience increased earnings gains.

One commenter recommended that the Department exempt all law programs accredited by the American Bar Association because, according to the commenter, students who complete accredited law programs rarely have difficulty in avoiding default on loans. We received similar comments with respect to graduate medical programs. One commenter recommended that the Department conduct a study on the impact of the D/E rates measure on medical programs and release that with the final regulations.

Some commenters argued generally that it is unfair for the Department to set requirements for some programs and not others. One commenter, focusing on degree programs, questioned treating for-profit institutions and public institutions differently based on whether the degree programs are subject to the gainful employment requirements.

Some commenters suggested that ''GE programs'' should be defined more narrowly. These commenters suggested that, instead of grouping programs by classification of instructional program (CIP) code and credential level, GE programs should be evaluated by campus location, or at the individual program level, because program performance may vary by campus location or program format due to differences in, for example, student demographics, local market conditions, and instructional methods.

One commenter noted that community colleges may offer programs where certificates and associate degrees are conferred concurrently upon completion, and recommended excluding these types of programs from the definition of ''GE program'' as they are primarily degree programs offered by a public institution, which would not otherwise constitute GE programs.

Discussion: To the extent a program constitutes an ''eligible program'' that ''provides a program of training to prepare students for gainful employment in a recognized profession'' under the HEA, the program by statute constitutes a ''GE program,'' and we do not have the authority to exclude it from the regulations. We note, for example, that Congress amended the HEA in 2008 to exempt from the gainful employment provisions programs leading to a baccalaureate degree in liberal arts that had been offered by a regionally accredited proprietary institution since January 1, 2009. We view this relatively recent and very specific amendment as an indication that the Department lacks discretion to exempt other types of programs. This applies to graduate programs, including ABA-accredited law schools or medical schools, regardless of the results of such programs under the D/E rates measure. The Department is not providing a separate study analyzing the impact of the D/E rates measure on medical programs with these regulations. As the regulations are implemented, we will

[4] Please see the ''Analysis of the Regulations: Methodology for pCDR Calculations'' in the Regulatory Impact Analysis.

monitor the impact of the D/E rates measure on all GE programs, including graduate medical programs.

We also do not agree that the purposes of the regulations are served by excluding graduate programs. Specifically, the issues of accountability for student outcomes, including excessive student debt, and transparency are as relevant to graduate programs and students as they are to undergraduate programs and students. Whether or not it is the case that many graduate programs prepare students for occupations where earnings gains are delayed, we do not believe that this justifies an exemption from the regulations. As discussed in the NPRM, earnings must be adequate to manage debt both in the early years after entering repayment and in later years. Future earnings gains are of course a desirable outcome, but borrowers could default on their loans soon after entering repayment, or experience extreme hardship that leads to negative consequences, well before these earnings gains are realized. Further, as discussed in the NPRM, borrowers may still be facing extreme hardship in repaying their loans even though they have not defaulted, and so, a low default rate by itself is not necessarily an indication that a program is leading to manageable student debt.

In response to commenters' concerns that similar programs offered by for-profit institutions and public institutions would be treated differently under the regulations, we note that this reflects the treatment of these programs under the HEA and a policy decision made by Congress. We firmly believe that implementing this policy decision through these regulations is necessary and appropriate and that students, prospective students, their families, the public, taxpayers, and the Government will benefit from these efforts.

Regarding the commenters' request that we evaluate GE programs at the campus level, we do not agree that it would be beneficial to break down the definition of ''GE program'' beyond CIP code and credential level. A GE program's eligibility for title IV, HEA program funds is determined at the institutional level, not by location; thus a program's eligibility applies to each of the locations at which the institutions offers the program. We note also that § 668.412 permits institutions offering a GE program in more than one location or format to create separate disclosure templates for each location or format. Thus, the institution has the discretion to provide information about its programs by location or format if it chooses to do so.

With respect to the commenter's request that we exclude from the definition of ''GE program'' programs at public institutions that concurrently confer an associate degree and a certificate, we do not believe a specific exclusion is required. A degree program at a public institution is not a ''GE program,'' even though enrolled students may also earn a certificate as part of the degree program. Of course, if the student is separately enrolled in a certificate program that student is included in that GE program for purposes of the D/E rates measure and disclosures.

Changes: None.

Comments: One commenter suggested that the Department should exempt small businesses that offer GE programs or, if the regulations do not provide an exemption based on size, that the Department should consider an additional or alternate requirement that institutions must meet (such as spending 2.5 times on instruction and student services than on recruitment). Another commenter stated that the Department should exempt institutions that have an enrollment of less than 2,000 students because of the burden that would be imposed on small institutions.

Discussion: We disagree that programs at institutions that might be considered small businesses or institutions with an enrollment of less than 2,000 students should be exempted from the regulations. In addition to the limitations in our statutory authority, an institution's size has no effect on whether the institution is preparing students for gainful employment in a recognized occupation. We also see no basis for establishing an alternative metric based on the amount of revenues an institution spends on instruction compared to recruiting because it would not indicate when a program is resulting in high debt burden. We believe that any burden on institutions resulting from these regulations is outweighed by the benefits to students and taxpayers. We discuss the burden on small institutions in the *Final Regulatory Flexibility Analysis.*

Changes: None.

Comments: One commenter suggested that in the final regulations, the Department should commit to evaluating whether the regulations result in the cost savings for the government estimated in the NPRM and the impact of the regulations on Federal student aid funding. The commenter also suggested that the Department commit to reviewing the estimated costs of implementing the regulations, including costs for meeting the information collection requirements. The commenter said the Department should commit to measuring whether the certification criteria for new programs are effective at ensuring whether those programs will remain eligible and pass the accountability metrics. Additionally, the commenter suggested that the Department affirm that it will measure whether the disclosure and reporting requirements improve market information as evidenced by increased enrollment in passing GE programs and decreased enrollment in failing and zone programs.

Discussion: We appreciate the commenters' suggestions and, as with all of our regulations, we intend to review the regulations as we implement them to ensure they are meeting their intended purposes and to evaluate the impact on students, institutions, and taxpayers.

Changes: None.

Comments: A number of commenters raised concerns about the definition of ''student,'' specifically the limitation of the term ''students'' to those individuals who receive title IV, HEA program funds for enrolling in the applicable GE program. These commenters believed that ''student'' should be defined, for all or some purposes of the regulations, more broadly.

Some commenters proposed that ''student'' be defined to include all individuals enrolled in a GE program, whether or not they received title IV, HEA program funds. These commenters argued that the purpose of the regulations should be to measure, and disclose, the outcomes of all individuals in a program. They argued that limiting the definition of ''student'' to students who receive title IV, HEA program funds is arbitrary and would present inaccurate and unrepresentative program outcomes, particularly for community colleges. According to these commenters, many of the individuals attending GE programs at community colleges do not receive title IV, HEA program funds and any accountability measures and disclosures that exclude their debt and earnings would not accurately reflect the performance of the GE program. They claimed that individuals who receive title IV, HEA program funds are disproportionally from underserved and low-income populations and tend to have higher debt and lower earnings outcomes.

Other commenters stated that the definition should include all students with a record in the National Student Loan Database System (NSLDS) because these individuals either filed a Free Application for Federal Student Aid

(FAFSA) or have previously received title IV, HEA program funds for attendance in another eligible program. According to the commenters, including these individuals would more accurately reflect the title IV, HEA program population at an institution and provide more relevant information for both eligibility determinations and consumer information. In making these suggestions, commenters were mindful of the court's interpretation in *APSCU* v. *Duncan* of relevant law regarding the Department's authority to maintain records in its NSLDS. Under these alternative proposed definitions, the commenters suggested that the Department could collect and maintain data regarding these individuals in a manner consistent with *APSCU* v. *Duncan* as they would already have records in NSLDS for these individuals.

Some commenters requested that the term ''student'' include individuals who did not receive title IV, HEA program funds for only specific purposes of the regulations. Some commenters argued that the definition of ''student'' for the purpose of the D/E rates measure should include all individuals who completed the program, whether or not they received title IV, HEA program funds, on the grounds that earnings and debt levels at programs are to some extent derived from differences in student characteristics and borrowing behavior between students receiving title IV, HEA program funds and individuals who do not receive title IV, HEA program funds. One commenter suggested that individuals who do not receive title IV, HEA program funds should be included in the calculation of D/E rates because otherwise, according to the commenter, institutions would encourage students who do not otherwise plan to take out loans to do so in order to improve a program's performance on the D/E rates measure.

Other commenters argued that the definition should be broadened only for certain disclosure requirements. For example, some of the commenters suggested that the completion and withdrawal rates and median loan debt disclosures should include the outcomes of all individuals enrolled in a GE program, both those who receive title IV, HEA program funds and those who do not in order to provide students, prospective students, and other stakeholders with a complete picture of a GE program's performance.

Discussion: We continue to believe that it is necessary and appropriate to define the term ''student'' for the purposes of these regulations as individuals who received title IV, HEA program funds for enrolling in the applicable GE program for two reasons.

First, as discussed in more detail in the NPRM, 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 APSCU* v. *Duncan,* 930 F. Supp. 2d at 220. Second, by limiting the D/E rates measure 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. Because the primary purpose of the D/E rates measure is determining whether a program should continue to be eligible for title IV, HEA program funds, we can make a sufficient assessment of whether a program prepares students for gainful employment based only on the outcomes of students who receive those funds.

Although we appreciate the commenters' interest in expanding the definition of ''student'' to consider the outcomes of all individuals enrolled in a GE program, our goal in these regulations is to evaluate a GE program's performance for the purpose of continuing eligibility for title IV, HEA program funds. Our proposed definition of ''students'' is directly aligned with that goal. 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. We understand that some GE programs may not have a large number of individuals receiving title IV, HEA program funds, but given the overall purpose of the regulations—determining a GE program's eligibility for title IV, HEA program funds—we do not believe it is necessary to measure the outcomes of individuals who do not receive that aid. For the same reasons, we do not believe it is necessary to include individuals who do not receive title IV, HEA program funds in the calculation of D/E rates or in the disclosures the Department calculates for a program.

Finally, the Department does not agree that limiting its analysis to only students receiving title IV, HEA program funds would create an incentive for institutions to encourage more students to borrow. We do not think it would be common for a student to take out a loan that the student did not otherwise plan to take on.

Changes: None.

Comments: One commenter stated that the Department had not adequately explained its departure from the approach taken in the 2011 Final Rules, which considered the outcomes of all individuals enrolled in a GE program rather than just individuals receiving title IV, HEA program funds.

Discussion: We have adequately justified the Department's decision to base the D/E rates measure only on the outcomes of individuals receiving title IV, HEA program funds. Our analysis of this issue is described in the previous paragraphs, was set forth in considerable detail in the NPRM, and, additionally, as noted in the NPRM, is supported by the court's decision in *APSCU* v. *Duncan.* The justifications presented meet the reasoned basis standard we must satisfy under the Administrative Procedure Act and relevant case law.

Changes: None.

Comments: We received a number of comments about the definition of ''student'' in the context of the mitigating circumstances showing in § 668.406 of the proposed regulations. As proposed in the NPRM, an institution would be permitted to demonstrate that less than 50 percent of all individuals who completed the program during the cohort period, both those individuals who received title IV, HEA program funds and those who did not, incurred any loan debt for enrollment in the program. A GE program that could make this showing would be deemed to pass the D/E rates measure.

In this context, some commenters argued against allowing institutions to include individuals who do not receive title IV, HEA program funds for enrollment in the GE program. These commenters noted that including individuals who do not receive these loans is at odds with the legal framework that the Department established in order to align the regulations with the district court's decision in *APSCU* v. *Duncan.* They suggested that permitting institutions to include individuals who do not receive loans under the title IV, HEA programs in a mitigating circumstances showing would be inconsistent with the court's decision and as a result would violate the HEA.

Several commenters also asserted that permitting mitigating circumstances showings or providing for a full exemption would discriminate in favor of institutions, such as community colleges, where less than 50 percent of individuals enrolled in the program receive title IV, HEA program funds.

According to these commenters, many of these public institutions have higher costs than institutions in the for-profit sector but have lower borrowing rates because the higher costs are subsidized by States. The commenters stated that if these institutions' programs are considered exempt from the D/E rates measure, programs that perform very poorly on other measures like completion would continue merely because they are low cost even though they do not reflect a sound use of taxpayer funds.

Some commenters stated that permitting a mitigating circumstances showing would result in unfair and unequal treatment of similar institutions in different States. The commenter said that, for example, in some States, cosmetology programs are eligible for State tuition assistance grants, while in other States these programs are not eligible for such grants. Schools charging the same tuition and whose graduates are making the same amount in one State would pass the D/E rates measure while those in another would not. Finally, some commenters asserted that only a fraction of programs at public institutions would fail the D/E rates measure, and that this small number does not support an exemption or permitting a mitigating circumstances showing.

A number of commenters supported the proposed mitigating circumstances showing, and specifically the inclusion of individuals who do not receive title IV, HEA program funds. As noted previously, commenters argued that these individuals should be considered because the number of students receiving title IV, HEA program funds and incurring debt to enroll in many community college programs is typically very small and these students do not represent the majority of individuals who complete the program. According to these commenters, a program in which at least 50 percent of individuals enrolled in the program have no debt is unlikely to produce graduates whose educational debts would be excessive because tuition and costs are likely to be low and require little borrowing. Commenters further noted that including these individuals in the calculation would be consistent with the 2011 Prior Rule, where a program with a median loan debt of zero passed the debt-to-earnings measures based on the borrowing activity of individuals who receive title IV, HEA program funds and those who do not. These commenters stated that even though the Department is largely limiting the accountability measures to an analysis of the earnings and debt of students receiving title IV, HEA program funds due to the concerns expressed by the district court in *APSCU* v. *Duncan,* a program with a median loan debt of zero, whether or not the calculation is limited to students receiving title IV, HEA program funds, should still pass the D/E rates measure.

Finally, these commenters noted that the D/E rates measure is designed to help ensure that students are receiving training that will lead to earnings that will allow them to pay back their student loan debts after they complete their program. According to these commenters, many GE programs, including many programs offered by community colleges, have low tuition and many of their students can pay the costs of the program solely through a Pell Grant, rather than incurring debt.

Some of the commenters who supported allowing an institution to make a showing of mitigating circumstances under § 668.406 of the proposed regulations also argued that, instead of requiring such a showing, the Department should completely exempt from the D/E rates measure any GE program for which less than 50 percent of the individuals who completed the program incurred loan debt for enrollment in the program. The commenters proposed several methodologies the Department could use to determine which programs qualify for the exemption. These commenters made similar arguments to those discussed previously—that these programs should not be subject to the administratively burdensome process for calculating the D/E rates, when ultimately these programs will have a median loan debt of zero and therefore will be determined to be passing the D/E rates measure. One of these commenters suggested that, if a program is failing or in the zone with respect to the D/E rates measure, the institution should have the ability to recalculate its median loan debt based on all graduates, to evaluate the overall quality of a program. The commenter proposed that, if the program passes on the basis of that recalculation, the notice of determination issued by the Department would be annotated to reflect that the institution made a showing of ''mitigating circumstances'' and the program would be deemed passing. Some of the commenters also argued that an exemption based on a borrowing rate of less than 50 percent should apply across the board to all GE program requirements, including the reporting and disclosure requirements.

Commenters asserted that, absent an exemption, many low-cost programs with a low borrowing rate would be inclined to leave the Direct Loan program or close their programs, even those programs that were effective. The commenters further stated that these closures would disproportionately affect minority and economically disadvantaged students, many of whom enroll in these programs, and that without these programs, these students would not have available economically viable options for furthering their education.

Discussion: We appreciate the commenters' responses to our request for comment on the definition of ''student'' and the mitigating circumstances provision in proposed § 668.406. None of the commenters, however, presented an adequate justification for us to depart from our proposed definition of ''students'' and the purpose of the regulations, which is to evaluate the outcomes of individuals receiving title IV, HEA program funds and a program's continued eligibility to receive title IV, HEA program funds based solely on those outcomes. We do not agree that a borrowing rate below 50 percent necessarily indicates that a program is low cost or low risk. A program with a borrowing rate of under 50 percent, particularly a large program, could still have a substantial number of students with title IV loans and, additionally, those students could have a substantial amount of debt or insufficient earnings to pay their debt. We also note that, if a GE program is indeed ''low cost'' or does not have a significant percentage of borrowers, which commenters claimed is the case with many community college programs, it is very likely that the program will pass the D/E rates measure because most students will not have any debt. NPSAS data show that, of all students completing certificate programs at two-year public institutions who received title IV, HEA program funds, 77 percent received only Pell Grants and only 23 percent were borrowers.[5] Program results in the 2012 GE informational D/E rates data set reflects the findings of the NPSAS analysis. Of the 824 programs at two-to-three-year public institutions in the 2012 GE informational D/E rates data set, 823 pass under the D/E rates measure. Further, of the 824 total programs at two-to-three-year public institutions, 504 (61 percent) have zero median debt, which means that, for these programs, less than half of the students completing the program are borrowers and that the majority of their students completing the program received title IV, HEA program funds in

[5] NPSAS:2012.

the form of Pell Grants only. Accordingly, we do not believe there is adequate justification to depart from our definition of ''student,'' by permitting a showing of mitigating circumstances based on individuals who do not receive title IV, HEA program funds for enrollment in a program, or to make a greater departure from our accountability framework, by permitting a related up-front exemption.

Changes: We have revised the regulations to remove the provisions in § 668.406 that would have permitted institutions to submit a mitigating circumstances showing for a GE program that is not passing the D/E rates measure.

Comments: A number of commenters recommended revisions to the definition of ''prospective student.'' One commenter recommended that the Department use the definition of ''prospective student'' in § 668.41(a), which provides that a ''prospective student'' is an individual who has contacted an eligible institution for the purpose of requesting information concerning admission to that institution. The commenter argued that using this definition would maintain consistency across the title IV, HEA program regulations.

Some of the commenters stated that the proposed definition is too broad. Specifically, they noted that an institution would not be able to identify, for example, to whom it was required to deliver disclosures and student warnings if anyone who had passive contact with an institution's advertising constituted a ''prospective student'' under the regulations. They suggested that if ''prospective student'' is defined that broadly, they would not be able to meet their obligations with respect to these students under the regulations or that compliance would be very burdensome, potentially requiring the development of new admissions and marketing materials annually. These commenters recommended that we revise the definition of ''prospective student'' to include only individuals who actively seek information from an institution about enrollment in a program. Another commenter expressed concern about the definition because, according to the commenter, a prospective student would include anyone who has access to the Internet.

Other commenters stated that the definition is too narrow and recommended that the term include anyone in contact with an institution about ''enrollment,'' rather than ''enrolling.'' According to these commenters, with this change, the definition would include family members, counselors, and others making enrollment inquiries on behalf of someone else.

Discussion: We believe that it is appropriate to establish a definition of ''prospective student'' that is tailored to the purpose of these specific regulations. In that regard, the definition will account for the various ways that institutions and prospective students commonly interact and target interactions that are specific to enrollment in a GE program, rather than more general contact about admission to an institution. Specifically, unlike the existing definition of ''prospective student'' in § 668.41(a), the definition in the GE regulations applies without regard to whether an individual or the institution initiates contact.

We agree, however, that an individual's passive interaction with an institution's advertising should not result in that individual being considered a ''prospective student'' for the purposes of the regulations. Accordingly, we are removing the reference to indirect contact through advertising from the definition of ''prospective student.'' Recognizing that institutions sometimes engage third parties to recruit students, we have also revised the definition to capture this type of direct contact with prospective students.

The commenters' proposed alternative definition, which would include individuals other than those in contact with the institution about enrolling in a program, is too broad for each of the purposes for which the definition is used. However, as we discuss in ''Section 668.410 Consequences of the D/E Rates Measure,'' we agree that, where an initial inquiry about enrolling in a program is made by a third party on behalf of a prospective student, the third party, as a proxy for the prospective student, should be given the student warning, as that is when a decision is likely to be made about whether to further explore enrolling in that program. We do not believe that the same reasoning applies, for example, with respect to the requirement in § 668.410 that a written warning be given to a prospective student at least three, but not more than 30, days before entering into an enrollment agreement.

Thus, the changes to the definition and to the related requirements that we have described balance the need to provide prospective students with critical information at a time when they can most benefit from it with ensuring that the administrative burden for institutions is not unnecessarily increased.

Changes: We have revised the definition of ''prospective student'' to exclude indirect contact through advertising and to include contact made by a third party on an institution's behalf.

Comments: One commenter asked that we clarify whether credential level is determined by academic year or calendar year.

Discussion: After further review of the proposed regulations, we have made several changes to the definition of ''credential level'' that make the commenter's concern moot. First, we are revising the definition to accurately reflect the treatment of a post-baccalaureate certificate as an undergraduate credential level under the title IV, HEA programs. This certificate was inappropriately listed as a graduate credential level in the proposed regulations.

We also are simplifying the definition by treating all of an institution's undergraduate programs with the same CIP code and credential level as one ''GE program,'' without regard to program length, rather than breaking down the undergraduate credential levels according to the length of the program as we proposed in the NPRM. To do so would be inconsistent with other title IV, HEA program reporting procedures and would unnecessarily add complexity for institutions. We note that, under § 668.412(f), an institution that offers a GE program in more than one program length must publish a separate disclosure template for each length of the program. Although D/E rates will not be separately calculated, several of the other required disclosures, including the number of clock or credit hours or equivalent, program cost, placement rate, and percentage of students who borrow, must be broken down by length of the program. Thus, students and prospective students will have information available to make distinctions between programs of different lengths.

Changes: We have revised the definition of ''credential level'' to include post-baccalaureate certificates as an undergraduate, rather than graduate, credential level and to specify that undergraduate credential levels are: Undergraduate certificate or diploma, associate degree, bachelor's degree, and post-baccalaureate certificate.

Section 668.402 Definitions

Comments: We received a number of comments regarding defined terms in the proposed regulations.

Discussion: Consistent with our organizational approach in the NPRM, we describe the comments received

relating to a specific defined term in the section in which the defined term is first substantively used.

Changes: We have made changes to the following defined terms. The changes are described in the section or sections indicated after the defined term.

Credential level (§ 668.401)
Classification of instructional program (CIP) code and, within that definition, the term ''substantially similar'' (§§ 668.410 and 668.414)
Cohort period (§ 668.404)
GE measures (§ 668.403)
Program cohort default rate (§ 668.403)
Prospective student (§ 668.401)

Section 668.403 Gainful Employment Program Framework Impact on For-Profit Institutions

Comments: Some commenters asserted that the poor outcomes identified by the D/E rates measure—high debt and low earnings—are problems across higher education and that, as a result, it would be unfair to hold only GE programs accountable under the D/E rates measure. Commenters cited data that, they argued, showed that this is the case for a large fraction of four-year programs operated by public and non-profit institutions. One commenter contended that between 28 percent and 54 percent of programs operated by the University of Texas would fail the Department's accountability metrics.[6]

Several commenters alleged that the regulations are a Federal overreach into higher education. A number of these commenters believed that the regulations unfairly target for-profit institutions. They stated that while a degree program at a for-profit institution must meet the D/E rates measure to remain eligible for title IV, HEA program funds, a comparable degree program at a public or private non-profit institution, which may have low completion rates or other poor outcomes, would not be subject to the regulations.

Some commenters asserted that for-profit institutions play an important role in providing career training for students to enter into jobs that do not require a four-year bachelor's degree. In that regard, one commenter contended that, because the regulations apply only to GE programs offered primarily by for-profit institutions, the regulations reflect a bias in favor of traditional four-year degree programs not subject to the regulations. This bias, the commenter argued, cannot be justified in light of BLS data showing that nearly half of bachelor's degree graduates are working in jobs that do not require a four-year degree. These degree-holders, according to the commenter, are actually employed in what can be described as ''middle-skill'' positions, for which the commenter believed for-profit institutions provide more effective preparation. These commenters all asserted that traditional institutions are ill-suited to provide students with training for middle-skill jobs compared to for-profit institutions. Other commenters argued that enrollment growth at non-profit and public institutions has not kept up with demand from students and for-profit institutions have responded to this need by offering opportunities for students. One commenter presented data showing that a majority of degrees in the fastest growing occupations are awarded by for-profit institutions.

Several commenters asserted that the regulations would have a substantial and disproportionate impact on programs in the for-profit sector and the students they serve. Commenters cited an analysis by Mark Kantrowitz claiming that, of GE programs that would not pass the D/E rates measure, a large and disproportionate portion are operated by for-profit institutions compared to programs operated by non-profit and public institutions, while other commenters relied on Department data to draw the same conclusion.[7]

Commenters said the Department is targeting for-profit programs because of an incorrect assumption that student outcomes are worse at for-profit institutions. They said the Department has ignored studies showing that, when compared to institutions that serve similar populations of students, for-profit institutions achieve comparable outcomes for their students. Another commenter cited a study that showed that first-time enrollees at for-profit schools experience greater unemployment after leaving school, but among those working, their annual earnings are statistically similar to their counterparts at non-profit institutions.

Several commenters asserted that the student body profiles at for-profit institutions could significantly affect program performance under the D/E rates measure. Charles River Associates analyzed NPSAS:2012 data and found that for-profit institutions serve older students (average age of 30.0 years compared to 24.6 years at private non-profit and 26.0 years at public institutions), veterans (7 percent of students compared to 3 percent at private non-profit and public institutions), students that are not exclusively full-time (30 percent of students compared to 29 percent at private non-profit and 57 percent at public institutions), independent students (80 percent at private for-profit institutions to 34 percent at private non-profit institutions and 49 percent at public institutions), single parents (33 percent at private for-profit institutions to 9 percent at private non-profit institutions and 13 percent at public institutions), students with dependents (51 percent at private for-profit institutions to 18 percent at private non-profit institutions to 25 percent at public institutions), students working more than 20 hours per week (48 percent at private for-profit institutions to 29 percent at private non-profit institutions to 44 percent at public institutions), students who consider their primary role to be an employee rather than a student (52 percent at private for-profit institutions to 23 percent at private non-profit institutions to 31 percent at public institutions), and students less likely to have a parent with at least a bachelor's degree (22 percent at private for-profit institutions to 52 percent at private non-profit institutions to 37 percent at public institutions).[8] They also found that minority students make up a higher percentage of the student body at for-profit institutions, with African-Americans making up 26 percent of students compared to 15 percent at public institutions and 14 percent at private non-profit institutions and Hispanic students comprising 19 percent of students at for-profit institutions, similar to the 17 percent at public institutions but higher than the 10 percent at private non-profit institutions. Additionally, commenters stated that 65 percent of students at for-profit institutions receive Pell Grants, while at private non-profit and public institutions, the percentage of Pell Grant recipients averages 36 percent and 38 percent, respectively. In addition, one commenter suggested that the Department should have considered that for-profit institutions are more likely to be open-enrollment institutions.

Commenters asserted that for-profit institutions do not in fact cost more for students and taxpayers than public

[6] Schneider, M. (2014). American Enterprise Institute. *Are Graduates from Public Universities Gainfully Employed? Analyzing Student Loan Debt and Gainful Employment.*

[7] Kantrowitz, M. (2014). Edvisors Network Inc., Student Aid Policy Analysis. *U.S. Department of Education Proposes Stricter Gainful Employment Rule.*

[8] National Postsecondary Student Aid Study (NPSAS) 2012. Unpublished analysis of restricted-use data.

institutions, particularly community colleges, when State and local appropriations and other subsidies received by public institutions are taken into account. One commenter said that for-profit two-year institutions cost less per student than public two-year institutions and that completion rates are somewhat higher at for-profit institutions. Commenters pointed to a number of studies estimating taxpayer costs across types of institutions. One found that associate degree programs at public institutions cost $4,000 more per enrollee and $35,000 more per graduate than associate degree programs at for-profit institutions, while another found that the direct cost to taxpayers on a per-student basis is $25,546 lower at for-profit institutions than at public two-year institutions, and a third found that taxpayer costs of four-year public institutions averaged $9,709 per student compared to $99 per student at for-profit institutions. Another study estimated that public institutions receive $19.38 per student in direct tax support and private non-profit institutions receive $8.69 per student for every $1 received by for-profit institutions per student. Commenters also referenced research estimating the total costs to State and local governments if students affected by the regulations shift to public institutions, with results ranging from $3.6 to $4.7 billion to shift students from nine for-profit institutions in four States to public two-year or four-year institutions. Similarly, one commenter referenced a study estimating the total cost of shifting students to public institutions among all States would be $1.7 billion in State appropriations to support one cohort of graduates from failing or zone programs at public 2-year or least selective four-year institutions.

Other commenters referred to budget data related to the title IV, HEA programs to state that student loans do not constitute costs to taxpayers because the recovery rate for these loans is over 100 percent, and asserted that any cost reductions in the title IV, HEA programs would be offset by reduced tax revenues at all levels of government and increased demand for capacity in the public sector. Others noted a GAO Report indicating Federal student loans originated between 2007 and 2012 will bring in $66 billion in revenue and that Congressional Budget Office projections from 2013 indicate that loans originated in the next ten-year period would generate $185 billion. Whether approaching the issue on a per-student, per-graduate, or overall taxpayer cost basis, the commenters stated that the rationale that the regulations will protect taxpayer interests does not withstand scrutiny.

One commenter said that the NPRM overstated the cost of for-profit institutions relative to public two-year institutions, because many programs at for-profit institutions offer advanced degrees and their students accrue more debt. Other commenters said the Department ignores the comparable tuition costs of non-profit private institutions, which, like for-profit institutions, generally do not benefit from direct appropriations from State governments.

One commenter asserted that the 150 percent of normal time graduation rate for public and private non-profit open-enrollment colleges is 28.3 percent and 39.7 percent respectively while for-profit colleges graduated 35.2 percent of students within 150 percent of normal time. Additionally, the commenter contended, more than half (55.7 percent) of for-profit colleges were open enrollment institutions in 2011–12, compared to less than 18 percent of public and 12 percent of private not-for-profit schools. Based on these findings, the commenter argued that while the for-profit graduation rate is lower than the average of all public and private nonprofit institutions, it is higher than the average of all open-enrollment public and private nonprofit institutions, which the commenter stated is likely to be a more appropriate comparison group.

Several commenters claimed that the Department's reference in the NPRM to *qui tam* lawsuits and State Attorneys General investigations into for-profit institutions evidence bias. In particular, commenters suggested such investigations were politically driven, based on bad-faith attacks, and failed to produce evidence of wrongdoing.

Some commenters said the Department's reference in the NPRM to a GAO report on the for-profit sector also demonstrates bias against for-profit institutions. Commenters asserted that the GAO investigation in particular contained errors and relied on false testimony, which required the GAO to correct and reissue its report.[9] Commenters said it was also inappropriate for the Department to rely on what the commenters called a ''deeply flawed'' partisan report by the Senate HELP committee majority staff, because the report partially relied on evidence presented in the GAO report, was actually issued by the committee majority staff for the committee, and was not adopted by vote of the whole committee.[10]

On the other hand, several commenters suggested that the Department should focus regulatory efforts on for-profit institutions because they have been engaged in predatory recruitment practices that hurt students and divert taxpayer funds away from higher-quality education programs. One commenter said that for-profit institutions increased recruiting of veterans by over 200 percent in just one year. Many commenters described the disproportionate distribution of government benefits to the for-profit sector, contending that for-profit institutions enroll only 10 percent of students, but account for 25 percent of Pell Grants and Stafford loan volume and account for half of defaults; that for-profit schools collected more than one-third of all G.I. Bill funds, but trained only 25 percent of veterans, while public colleges and universities received only 40 percent of G.I. Bill benefits but trained 59 percent of veterans; and that for-profit colleges cost taxpayers twice the tuition as non-profits. Several commenters described the high proportion of students who drop out of or withdraw from programs at for-profit institutions—about half of students who enroll.

On the other hand, several commenters cited an analysis of IPEDS data by Charles River Associates that found that the difference in FY 2010 institutional cohort default rates (iCDR) among for-profit (22 percent), private non-profit (8 percent), and public (13 percent) institutions was significantly reduced when institutions were grouped into two categories of Pell Grant recipient concentration. The High Pell group had at least 50 percent of students receiving Pell Grants and the Low Pell group had less than 50 percent of students with Pell Grants. The Charles River Associates analysis found that among two-year institutions, in the High Pell Group, the iCDR at for-profit institutions is 20.6 percent compared to 24.2 percent at public institutions and, in the Low Pell Group, the iCDR is 16.6 percent at for-profit institutions and 20.4 percent at public institutions.

Several commenters asserted that the Department has clear justification for limiting application of the regulations to institutions in the for-profit sector and other institutions offering programs that purport to prepare students for gainful

[9] *Postsecondary Education: Student Outcomes Vary at For-Profit, Nonprofit, and Public Schools* (GAO–12–143), GAO, December 7, 2011.

[10] ''For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success,'' Senate HELP Committee, July 30, 2012.

employment. One commenter cited a study that found that students at for-profit institutions were twice as likely to default on their student loans as students at other types of schools and another study that found that graduation rates at for-profit colleges were less than one-third the rates at non-profit colleges. By comparison, the commenter cited economic research that found that students in non-profit and public certificate programs had lower debt burdens, higher earnings, lower unemployment, and lower student loan default rates and were more satisfied with their programs, even after controlling for student demographic factors.

One commenter said the Department has a specific legislative mandate to regulate gainful employment programs, which include the programs offered by for-profit institutions, and, as a result, the Department is correct to apply the regulations to those programs. Some commenters added that for-profit institutions are subject to less regulation and accountability than non-profit institutions because for-profit institutions are not governed by an independent board composed of members without an ownership interest. Consequently, they argued, the Department should particularly regulate programs operated by for-profit institutions.

Discussion: The regulations do not target for-profit programs for loss of eligibility under the title IV, HEA programs. To the contrary, the Department appreciates the important role for-profit institutions play in educating students.

The for-profit sector has experienced tremendous growth in recent years,[11] fueled by the availability of Federal student aid funding and an increased demand for higher education, particularly among non-traditional students.[12] The share of Federal student financial aid going to students at for-profit institutions has grown from approximately 13 percent of all title IV, HEA program funds in award year 2000–2001 to 19 percent in award year 2013–2014.[13]

The for-profit sector plays an important role in serving traditionally underrepresented populations of students. For-profit institutions are typically open-enrollment institutions that are more likely to enroll students who are older, women, Black, Hispanic, or with low incomes.[14] Single parents, students with a certificate of high school equivalency, and students with lower family incomes are also more commonly found at for-profit institutions than community colleges.[15]

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.[16] 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,''[17] including occupations requiring ''middle-skill'' training.

At least some research suggests that for-profit institutions respond to demand that public institutions are unable to handle. Recent evidence from California suggests that for-profit institutions absorb students where public institutions are unable to respond to demand due to budget constraints.[18] [19] Additional research has 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.'' [20]

Other evidence, however, suggests that for-profit institutions are facing increasing competition from community colleges and traditional universities, as these institutions have started to expand their programs in online education. According to the annual report recently filed by a large, publically traded for-profit institution, ''a substantial proportion of traditional colleges and universities and community colleges now offer some form of . . . online education programs, including programs geared towards the needs of working learners. As a result, we continue to face increasing competition, including from colleges with well-established brand names. As the online . . . learning segment of the postsecondary education market matures, we believe that the intensity of the competition we face will continue to increase.'' [21]

These regulations apply not only to programs operated by for-profit institutions, but to all programs, across all sectors, that are subject to the requirement that in order to qualify for Federal student assistance, they must provide training that prepares students for gainful employment in a recognized occupation. Under the HEA, for these purposes, an eligible program includes 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. Our regulatory authority in this rulemaking with respect to institutional accountability is limited to defining the statutory requirement that these programs are eligible to participate in the title IV, HEA programs because they provide training that prepares students for gainful employment in a recognized occupation. The Department does not have the authority in this rulemaking to regulate other higher education institutions or programs, even if such institutions or programs would not pass the accountability metrics.

The regulations establish an accountability framework and transparency framework for GE programs, whether the programs are operated by for-profit institutions or by public or private non-profit institutions. However, we are particularly concerned about high costs, poor outcomes, and deceptive practices at some institutions in the for-profit sector.

[11] National Center for Education Statistics (NCES) (2014). Digest of Education Statistics (Table 222). Available at: *http://nces.ed.gov/programs/digest/d12/tables/dt12_222.asp*. This table provides evidence of the growth in fall enrollment. For evidence of the growth in the number of institutions, please see the Digest of Education Statistics (Table 306) available at *http://nces.ed.gov/programs/digest/d12/tables/dt12_306.asp*.

[12] 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.

[13] U.S. Department of Education, Federal Student Aid, *Title IV Program Volume Reports,* available at *https://studentaid.ed.gov/about/data-center/student/title-iv*. The Department calculated the percentage of Federal Grants and FFEL and Direct student loans (excluding Parent PLUS) originated at for-profit institutions (including foreign) for award year 2000–2001 and award year 2013–2014.

[14] 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.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] 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/*.

[19] Cellini, S. R. (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.

[20] 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.

[21] Apollo Group, Inc. (2013). Form 10–K for the fiscal year ended August 31, 2013. Available at *www.sec.gov/Archives/edgar/data/929887/000092988713000150/apol-aug312013x10k.htm*.

[19] Cellini, S. R. (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.

With respect to comments that the NPRM overstates the cost of for-profit institutions relative to public two-year institutions because many for-profit programs offer advanced degrees, the data do not support this contention. A comparison of costs at institutions offering credentials of comparable levels shows that for-profit institutions typically charge higher tuition than do public postsecondary institutions. Among first-time full-time degree or certificate seeking undergraduates at title IV, HEA institutions operating on an academic calendar system and excluding students in graduate programs, average tuition and required fees at less-than-two-year for-profit institutions are more than double the average cost at less-than-two-year public institutions and average tuition and required fees at two-year for-profit institutions are about four times the average cost at two-year public institutions.[22] [23] Because less than two-year and two-year for-profit institutions largely offer certificates and associate degrees, rather than more expensive four-year degrees or advanced degrees,[24] it is unlikely to be the case that higher tuition at for-profit institutions is the result of advanced degree offerings as argued by some commenters.

Comparing tuition at for-profit institutions and private non-profit institutions reveals similar results. Although the differential between for-profit institutions and private non-profit institutions that offer similar credentials is smaller than the difference between for-profit institutions and public institutions, for-profit institutions still charge more than private non-profit institutions when comparing two-year and less-than-two-year institutions, which includes the majority of institutions offering GE programs within the non-profit sector.[25]

The Department acknowledges that funding structures and levels of government support vary by type of institution, with public institutions receiving more direct funding and public and private non-profit institutions benefiting from their tax-exempt status. However, as detailed in ''Discussion of Costs, Benefits, and Transfers'' in the *Regulatory Impact Analysis,* we do not agree that the regulations will result in significant costs for State and local governments. In particular, we expect that many students who change programs as a result of the regulations will choose from the many passing programs at for-profit institutions or that State and local governments may pursue lower marginal cost options to expand capacity at public institutions.

With respect to revenues generated by the Federal student loan programs, we note that the estimates presented reflect a low discount rate environment and that returns vary across different segments of the portfolio. Currently, the Direct Loan program reflects a negative subsidy. Subsidy rates represent the Federal portion of non-administrative costs—principally interest subsidies and defaults—associated with each borrowed dollar over the life of the loan. Under Federal Credit Reform Act (FCRA) rules, subsidy costs such as default costs and in-school interest benefits are embedded within the program subsidy, whereas Federal administration costs are treated as annual cash amounts and are not included within the subsidy rate.

Annual variations in the subsidy rate are largely due to the relationship between the OMB-provided discount rate that drives the Government's borrowing rate and the interest rate at which borrowers repay their loans. Technical assumptions for defaults, repayment patterns, and other borrower characteristics would also apply. The loan subsidy estimates are particularly sensitive to fluctuations in the discount rate. Even small shifts in economic projections may produce substantial movement, up or down, in the subsidy rate. While the Federal student loan programs, especially Unsubsidized loans and PLUS loans, generate savings in the current interest rate environment, the estimates are subject to change. In any event, although the regulations may result in reduced costs to taxpayers from the title IV, HEA programs, the primary benefits of the regulations are the benefits to students.

Because aid received from grants has not kept pace with rising tuition in the for-profit sector, in contrast to other sectors, the net cost to students who attend GE programs has increased sharply in recent years.[26] Not surprisingly, ''student borrowing in the for-profit sector has risen dramatically to meet the rising net prices.'' [27] Students at for-profit institutions are more likely to receive Federal student financial aid and have higher average student debt than students in public and private non-profit institutions, even taking into account the socioeconomic background of the students enrolled within each sector.[28]

In 2011–2012, 60 percent of certificate students who were enrolled at for-profit two-year institutions took out title IV student loans during that year compared to 10 percent at public two-year institutions.[29] Of those who borrowed, the median amount borrowed by students enrolled in certificate programs at two-year for-profit institutions was $6,629, as opposed to $4,000 at public two-year institutions.[30] In 2011–12, 20 percent of associate degree students who were enrolled at for-profit institutions took out student loans, while only 66 percent of associate degree students who were enrolled at public two-year institutions did so.[31] Of those who borrowed in 2011–12, for-profit two-year associate degree enrollees had a median amount borrowed during that year of $7,583, compared to $4,467 for students at public two-year institutions.[32]

Although student loan default rates have increased in all sectors in recent years, they are highest among students attending for-profit institutions.[33] [34] Approximately 19 percent of borrowers who attended for-profit institutions default on their Federal student loans within the first three years of repayment as compared to about 13 percent of borrowers who attended public institutions.[35] Estimates of ''cumulative lifetime default rates,'' based on the number of loans, rather than borrowers,

[20] 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.

[21] Apollo Group, Inc. (2013). Form 10–K for the fiscal year ended August 31, 2013. Available at *www.sec.gov/Archives/edgar/data/929887/000092988713000150/apol-aug312013x10k.htm.*

[23] *Id.*

[24] NCES, Digest of Education Statistics 2013 (Table 318.40) available at *http://nces.ed.gov/programs/digest/d13/tables/dt13_318.40.asp.* Indicates that in 2011–12, of 855,562 degrees and

[26] Cellini, S. R., and Darolia, R. (2013). College Costs and Financial Constraints: Student Borrowing at For-Profit Institutions. Unpublished manuscript. Available at *www.upjohn.org/stuloanconf/Cellini_Darolia.pdf.*

[27] *Id.*

[28] 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.

[29] National Postsecondary Student Aid Study (NPSAS) 2012. Unpublished analysis of restricted-use data using the NCES PowerStats tool available at *http://nces.ed.gov/datalab/postsecondary/index.aspx.*

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] Darolia, R. (2013). Student Loan Repayment and College Accountability. Federal Reserve Bank of Philadelphia.

[34] 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.

[35] Based on the Department's analysis of the three-year cohort default rates for fiscal year 2011, U.S. Department of Education, available at *http://www2.ed.gov/offices/OSFAP/defaultmanagement/schooltyperates.pdf.*

yield average default rates of 24, 23, and 31 percent, respectively, for public, private, and for-profit two-year institutions in the 2007–2011 cohort years. Based on estimates using dollars in those same cohort years (rather than loans or borrowers, to estimate defaults) the average lifetime default rate is 50 percent for students who attended two-year for-profit institutions in comparison to 35 percent for students who attended two-year public and non-profit private institutions.[36] Although we included a regression analysis on pCDR and student demographic characteristics, including the percentage of Pell students attending each program, in the NPRM, we do not respond to comments on this subject because the regulations no longer include pCDR as an accountability metric to determine eligibility for title IV, HEA program funds.

There is evidence that many programs at for-profit institutions may not be preparing students as well as comparable programs at public institutions. 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, for 9 out of 10 licensing exams, graduates of for-profit institutions had lower rates of passing than graduates of public institutions.[37]

Many for-profit institutions devote greater resources to recruiting and marketing than they do to instruction or to student support services.[38] An investigation by the U.S. Senate Committee on Health, Education, Labor & Pensions (Senate HELP Committee) of 30 prominent for-profit institutions found that almost 23 percent of revenues were spent on marketing and recruiting but only 17 percent on instruction.[39] 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.[40]

We disagree with the commenters who asserted that the Department's reference to the findings presented in the GAO and Senate HELP Committee staff reports are inappropriate because the GAO report (on which the Senate HELP Committee report partially relied) contained errors and misleading testimony. We rely upon available data presented in the re-released version of the GAO report. Because GAO included these data and conclusions on licensure passage rates in their re-released version, we believe this evidence is reliable and appropriate to reference in support of the regulations. Also, we note that the evidence we use from the Senate HELP Committee report[41] is reliable because the data the report is based on are readily available and has been subject to public review. We do not rely upon qualitative testimony presented by the Committee. We referenced in the NPRM some descriptions and characterizations from the HELP and GAO reports of abusive conduct by for-profit institutions, but those descriptions and characterizations were incidental to our discussion and rationale.[42] We make clear in the NPRM our ''primary concern''—that a number of GE programs are not providing effective training and are training for low-paying jobs that do not justify costs of borrowing. 79 FR 16433. We stated that the causes of these problems are ''numerous;'' we listed five causes, the last of which is the deceptive marketing practices on which the two reports focus.[43] Moreover, the two reports were hardly the only evidence we cited of such practices. 79 FR 16435. More pertinent to the commenter's objection, these regulations are not adopted to impose sanctions on schools that engage in misrepresentations; the Department has already adopted rules to address enforcement actions for misrepresentations by institutions regarding, among other things, their educational programs and the employability of their graduates. *See* 34 CFR part 668, subpart F. Rather, we concluded that these regulations are needed based on our analysis of the data and literature, and our objectives in these regulations are to establish standards to determine whether a GE program is an eligible program and to provide important disclosures to students and prospective students. We need not rely on reports that indicate predatory and abusive behavior in order to conclude that a test is needed to determine whether a program is in fact one that prepares students for ''gainful employment.''

Lower rates of completion at many for-profit institutions are a cause for concern. The six-year degree/certificate attainment 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 67 percent at public institutions.[44] However, it is important to note that, among first-time undergraduate students who began at a two-year degree-granting institution in 2003–2004, the six-year degree/certification attainment rate was 40 percent at for-profit institutions compared to 35 percent at public institutions.[45] We note that, as suggested by a commenter, completion rates for only open-enrollment institutions may be different than those discussed here.

The slightly lower degree/certification attainment rates of two-year public institutions may at least be partially attributable to higher rates of transfer from two-year public institutions to other institutions.[46] Based on available data, it appears that relatively few students transfer from for-profit institutions to other institutions. Survey data indicate about 5 percent of all student transfers originate from for-profit institutions, while students transferring from public institutions represent 64 percent of all transfers occurring at any institution (public two-year institutions to public four-year institutions being the most common type of transfer).[47] Additionally, students who transfer from for-profit institutions are substantially less likely to be able to successfully transfer credits to other institutions than students who transfer from public institutions. According to a recent NCES study, an estimated 83 percent of first-time beginning undergraduate students who transferred from a for-profit institution

[36] Federal Student Aid, *Default Rates for Cohort Years 2007–2011, www.ifap.ed.gov/eannouncements/attachments/060614DefaultRatesforCohortYears20072011.pdf.*

[37] Postsecondary Education: Student Outcomes Vary at For-Profit, Nonprofit, and Public Schools (GAO–12–143), GAO, December 7, 2011.

[38] For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success, Senate HELP Committee, July 30, 2012.

[39] *Id.*

[40] *Id.*

[41] The commenter suggests that the fact that the report was not ''voted on'' by the committee renders the report suspect. The commenter cites no rule that requires reports issued ''by the committee'' or even by committee staff to be voted on. The report states that it is ''Prepared *by* the Committee on Health, Education, Labor, and Pensions, United States Senate.'' S. Prt. No. 112–37. Because no bill accompanied the report, it is not clear why any vote would be in order.

[42] We cite findings in the HELP report in three paragraphs on two pages of the preamble of the NPRM. 79 FR 16434, 16435 (virtually identical language is repeated in the Regulatory Impact Analysis at 79 FR 16937, 16938). Two of those paragraphs also cite to the GAO report. We note that the same commenter asserts that Congress has already ''addressed'' these abuses by banning incentive compensation for recruiters, proscriptions that an industry trade group has vigorously opposed in litigation. *APSCU* v. *Duncan,* 681 F.3d 427 (D.C. Cir. 2012).

[43] *Id.*

[44] ''Students Attending For-Profit Postsecondary Institutions: Demographics, Enrollment Characteristics, and 6-Year Outcomes'' (NCES 2012–173). Available at: *http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2012173.*

[45] *Id.*

[46]

[47]

to an institution in another sector were unable to successfully transfer credits to their new institution. In comparison, 38 percent of first-time beginning undergraduate students who transferred between two public institutions were not able to transfer credits to their new institution.[48]

The higher costs of for-profit institutions and resulting greater amounts of debt incurred by their former students, together with generally lower rates of completion, continue to raise concerns about whether some for-profit programs lead to earnings that justify the investment made by students, and additionally, taxpayers through the title IV, HEA programs.

In general, we believe that most programs operated by for-profit institutions produce positive educational and career outcomes for students. One study estimated moderately positive earnings gains, finding that ''[a]mong 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.'' [49] However, recent evidence suggests ''students attending for-profit institutions generate earnings gains that are lower than those of students in other sectors.'' [50] The same study that found gains resulting from for-profit attendance in the range of 2 to 8 percent per year of education also found that gains for students attending public institution are ''upwards of 9 percent.'' [51] But, other studies fail to find significant differences between the returns to students on educational programs at for-profit institutions and other sectors.[52]

Analysis of data collected on the outcomes of 2003–2004 first-time beginning postsecondary students in the Beginning Postsecondary Students Longitudinal Study shows that students who attend for-profit institutions are more likely to be idle—neither working nor still in school—six years after starting their programs of study in comparison to students who attend other types of institutions.[53] Additionally, students who attend for-profit institutions and are 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.[54]

The commenters' claims that the Department's reference in the NPRM to *qui tam* lawsuits and State Attorneys General investigations into for-profit institutions demonstrates bias by the Department against the for-profit sector are simply unfounded. The evidence derived from these actions shows individuals considering enrolling in GE programs offered by for-profit institutions have in many instances been given such misleading information about program outcomes that they could not effectively compare programs offered by different institutions in order to make informed decisions about where to invest their time and limited educational funding.

The GAO and other investigators have found evidence that high-pressure and deceptive recruiting practices may be taking place at some for-profit institutions. In 2010, the GAO released the results of undercover testing at 15 for-profit colleges across several States.[55] Thirteen of the colleges tested gave undercover student applicants ''deceptive or otherwise questionable information'' about graduation rates, job placement, or expected earnings.[56] 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.[57] 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.[58]

There has been growth in the number of *qui tam* lawsuits brought by private parties alleging wrongdoing at for-profit institutions, such as misleading consumers about their effectiveness by inflating job placement rates.[59] Such conduct can reasonably be expected to cause consumers to enroll and borrow, on the basis of these representations, amounts that they may not be able to repay.

In addition, a growing number of State and Federal law enforcement authorities have launched investigations into whether for-profit institutions are using aggressive or even deceptive marketing and recruiting practices that will likely result in the same high debt burdens. Several State Attorneys General have sued for-profit institutions to stop these fraudulent marketing practices, including manipulation of job placement rates. In 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.[60] The State of Illinois sued Westwood College for misrepresentations and false promises made to students enrolling in the company's criminal justice program.[61] 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.[62] And most recently, a group of 13 State Attorneys General issued Civil Investigatory Demands to Corinthian Colleges, Inc. (Corinthian), Education Management Co., ITT Educational Services, Inc. (ITT), and CEC, seeking information about job placement rate

[48] NCES, ''Transferability of Postsecondary Credit Following Student Transfer or Coenrollment,'' NCES 2014–163, table 8.

[49] Cellini, S. R., and Darolia, R. (2013). College Costs and Financial Constraints: Student Borrowing at For-Profit Institutions. Unpublished manuscript. Available at *www.upjohn.org/stuloanconf/Cellini_Darolia.pdf*.

[50] Darolia, R. (2013). Student Loan Repayment and College Accountability. Federal Reserve Bank of Philadelphia.

[51] Cellini, S. R., and Darolia, R. (2013). College Costs and Financial Constraints: Student Borrowing at For-Profit Institutions. Unpublished manuscript. Available at *www.upjohn.org/stuloanconf/Cellini_Darolia.pdf*.

[52] 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.

[53] 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.

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[55] 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).

[56] *Id.*

[57] For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success, Senate HELP Committee, July 30, 2012.

[58] *Id.*

[59] *''U.S. to Join Suit Against For-Profit College Chain,'' The New York Times, May 2, 2011. Available at: http://www.nytimes.com/2011/05/03/education/03edmc.html?_r=0.*

[60] ''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.*

[61] ''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/.*

[62] ''Kentucky Showdown,'' Inside Higher Ed, Nov. 3, 2011. Available at: *www.insidehighered.com/news/2011/11/03/ky-attorney-general-jack-conway-battles-profits.*

data and marketing and recruitment practices.[63] The States participating include Arizona, Arkansas, Connecticut, Idaho, Iowa, Kentucky, Missouri, Nebraska, North Carolina, Oregon, Pennsylvania, Tennessee, and Washington.

Federal agencies have also begun investigations into such practices. For example, the Consumer Financial Protection Bureau (CFPB) issued Civil Investigatory Demands to Corinthian and ITT in 2013, demanding information about their marketing, advertising, and lending policies.[64] The Securities and Exchange Commission also subpoenaed records from Corinthian in 2013, seeking student information in the areas of recruitment, attendance, completion, placement, and loan defaults.[65] And, the Department itself is gathering and reviewing extensive amounts of data from Corinthian regarding, in particular, the reliability of its disclosures of placement rates.[66]

This accumulation of evidence of misrepresentations to consumers by for-profit institutions regarding their outcomes provides a sound basis for the Department to conclude that a strong accountability framework for assessing outcomes by objective measures is necessary to protect consumers from enrolling and borrowing more than they can afford to repay. The same accumulation of evidence demonstrates the need for requiring standardized, readily comparable disclosures of outcomes to consumers, to enable consumers to compare programs and identify those more likely to lead to positive results.

Commenters' claims of bias are further belied by the Department's own data estimates. We expect that the great majority of programs, including those in the for-profit sector, will pass the D/E rates measure and comply with the other requirements of the regulations. Further, we believe that the estimated data likely overstate the number of failing and zone programs because many programs will improve outcomes during the transition period.

[63] ''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.*

[64] *Id.*

[65] ''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-o/n-sec-probe/.*

[66] U.S. Department of Education, Press Release, ''Education Department Names Seasoned Team to Monitor Corinthian Colleges,'' July 18, 2014. Available at: *www.ed.gov/news/press-releases/education-department-names-seasoned-/team-monitor-corinthian-colleges.*

Of the minority of programs that we expect will not pass the D/E rates measure, a disproportionate percentage may be operated by for-profit institutions. However, since a great many more for-profit programs will in fact pass the measure, we expect students to continue to have access to GE programs operated by for-profit institutions in addition to educational options offered by public and non-profit institutions. With respect to comments that a disproportionate percentage of programs operated by for-profit institutions will not pass the D/E rates measure because they provide open enrollment admissions to low-income and underrepresented populations of students, we do not expect student demographics to overly influence the performance of programs on the D/E rates measure. Please see ''Student Demographic Analysis of Final Regulations'' in the Regulatory Impact Analysis for a discussion of student demographics.

Finally, we disagree with the commenters that claimed the regulations unfairly assess for-profit institutions because programs operated by for-profit institutions are in fact less expensive than programs operated by public institutions, once State and local subsidies are taken into account. While for-profit institutions may need to charge more than public institutions because they do not have the State and local appropriation dollars and must pass the educational cost onto the student, there is some indication that even when controlling for government subsidies, for-profit institutions charge more than their public counterparts. To assess the role of government subsidies in driving the cost differential between for-profit and public institutions, Cellini conducted a sensitivity analysis comparing the costs of for-profit and community college programs. Her research found the primary costs to students at for-profit institutions, including foregone earnings, tuition, and loan interest, amounted to $51,600 per year on average, as compared with $32,200 for the same primary costs at community colleges. Further, Cellini's analysis estimated taxpayer contributions, such as government grants, of $7,600 per year for for-profit institutions and $11,400 for community colleges.[67]

These regulations will help ensure that students are receiving training that prepares them for gainful employment, regardless of the financial structure of the institution they attend. Although the regulations may disproportionately affect programs operated by for-profit institutions, we believe evidence on the performance, economic costs, and business practices of for-profit institutions shows that these regulations are necessary to protect students and safeguard taxpayer funds.

Changes: None.

Comments: A few commenters suggested that, in lieu of the gainful employment regulations, the Department adopt the college ratings system and College Scorecard to apply equally across all programs.

Discussion: In addition to these regulations, the Department publishes the College Scorecard, which includes data on institutional performance that can inform the enrollment decisions of prospective students. We also plan to release the college ratings system to provide additional information for students and develop the data infrastructure and framework for linking the allocation of title IV, HEA program funds to institutional performance. Because the College Scorecard and the proposed ratings system focus on institution level performance, rather than program level performance, we do not believe it is appropriate to consider them as alternatives to these regulations for purposes of public disclosure or accountability. Further, neither of these initiatives allow for determinations of eligibility for the title IV, HEA programs as provided for in these regulations.

Changes: None.

Impact on Students

Comments: One commenter asserted that the regulations would harm millions of students who attend private sector, usually for-profit, colleges and universities and requested that the Department withdraw the proposed regulations and instead engage in meaningful dialogue with stakeholders to reach shared goals. Numerous commenters contended that the regulations are biased against programs that serve a significant number of non-traditional, underserved, low-income, and minority students and, as a result, will reduce opportunities for these students. One commenter estimated that, by 2020, the regulations will restrict the access to education of between one and two million students, and nearly four million within the next decade.

The commenters argued that students from underserved populations have greater financial need, causing them to borrow more, and typically start with lower earnings, and so will also have relatively lower earnings after

[67] Cellini, S. R. (2012). For Profit Higher Education: An Assessment of Costs and Benefits. *National Tax Journal,* 65 (1):153–180.

completion. Several commenters submitted data or information that they believed supported this point. One commenter asserted that Pell Grant recipients are 3.8 to 5 times more likely to borrow as those who do not have Pell Grants and that, among students who complete GE programs, African-Americans and Hispanics are 22 to 24 percent more likely to borrow than whites. Another commenter referenced NCES Baccalaureate and Beyond 2008/09 data to argue that socioeconomic status at the time of college entry affects a student's debt-to-earnings ratio one year after college and that only students at public institutions in the highest quartile of income before college had debt-to-earnings ratios below 8 percent while students in the lowest quartile had debt-to-earnings ratios of about 12 percent in all types of institutions. The commenters reasoned that as a result, the programs that serve students from these populations are disproportionately likely to be failing programs. Several commenters referred to the Department's analysis in the NPRM that the commenters believed demonstrates that a large subset of students in failing and zone programs will be female, African-American, and Hispanic. Some commenters provided additional analyses conducted at the direction of an association representing for-profit institutions asserting that much of the variance in D/E rates is associated with student demographic characteristics.[68] The commenters contended that a substantial body of research exists demonstrating a strong correlation between student characteristics and outcomes including graduation, earnings, and loan default. One commenter posited that a multivariate regression analysis conducted by the Department in 2012 showed that race, gender, and income were all significant characteristics in predicting degree completion, with the odds of completing a degree 32 percent lower for male students, 43 percent lower for Black students, and 25 percent lower for Hispanic students. Other commenters pointed to an article noting that the overall B.A. graduation rate at private non-profit colleges in 2011 was 52 percent, but for institutions with under 20 percent of students receiving Pell Grants, the graduation rate was 79 percent, while for institutions with more than 60 percent of students receiving Pell Grants, the B.A. graduation rate was 31 percent.

According to the commenters, as a result of the regulations, students from underserved populations would be forced to either forego postsecondary education or instead attend passing programs, and the performance of those passing programs would be harmed by the increases in debt and decreases in earnings due to the shift in the composition of enrolling students. They also argued that educational opportunities for low-income and minority students would be reduced because both the Department's and third-party analyses project that most of the programs that would lose eligibility for title IV, HEA program funds under the regulations would be programs offered by for-profit institutions, which serve a large number of these students. One commenter estimated the racial and ethnic composition of students in ineligible programs: between 25 and 40 percent of African-American students, and between 21 and 39 percent of Hispanic students who are enrolled in GE programs would be in ineligible programs. Similarly between 24 and 41 percent of female students, between 32 and 46 percent of veteran students, and between 26 and 46 percent of Pell-eligible students would be in ineligible programs. Two commenters referred to the impact on the Latino community in particular, claiming that nearly 840,000 Latinos in Orange and Los Angeles counties alone will be denied access to community colleges over the next ten years because there are not enough programs to address growing demand in the Los Angeles metropolitan area.

Some commenters expressed concern that the regulations would create incentives for for-profit institutions to decrease access to low-income and minority students. At the same time, they argued, community colleges would not by themselves have the capacity to meet the increased demand resulting from this decreased access, and from programs that become ineligible, at for-profit institutions. The commenters suggested that community colleges are not flexible enough in course scheduling and other areas to accommodate many non-traditional and adult students and are not nimble enough to quickly adjust to labor market changes. Accordingly, they said, the regulations run counter to the goal of increasing educational opportunities for all students, not just those in socioeconomic and demographic groups that tend to enter into high-earning occupations, and, over time, the regulations would not improve the situations of students from underserved populations.

Commenters argued that the regulations, and the accountability metrics in particular, should factor in the effect of these and other student characteristics on outcomes. Some commenters suggested that the Department estimate earnings gains using regression-based methods that take into account student characteristics, while others suggested applying different D/E rates thresholds to each program, based on student characteristics, such as the percentage of students receiving a Pell Grant. Commenters cited an analysis conducted at the direction of an association representing for-profit institutions that focused on a subset of programs providing training for healthcare-related professions that they claimed showed student demographics are stronger predictors of GE program outcomes on the D/E rates and pCDR measures than the quality of program instruction.[69] The commenters said that these findings contradicted the analysis conducted by the Department. Other commenters said minority status and Pell Grant eligibility, in particular, are factors that significantly affect completion, borrowing, and default outcomes. Another commenter argued that the statutory provisions that allow an institution with high cohort default rates to appeal the determination of ineligibility if it serves a high number of low-income students are evidence that Congress intended to recognize that student demographics are unrelated to program quality. As such, the commenter suggested that student demographics should be taken into account in the regulations.

Specifically with respect to the pCDR measure, commenters argued that its use as an eligibility metric would hold institutions and programs accountable for factors beyond their control, including the demographics of their students and the amounts they borrowed. The commenters argued that, in the context of iCDR, data publically available through FSA and NCES show a strong relationship between a failing iCDR and high usage of Pell Grants (an indicator of students' low-income status), and demonstrate a strong relationship between a failing iCDR and minority status. The commenters believed that outcomes under the pCDR measure would similarly be tied to students' socioeconomic and minority statuses, resulting in less institutional willingness to enroll minority, low-income students or students from any

[68] Guryan, J., and Thompson, M. Charles River Associates. (2014). *Report on the Proposed Gainful Employment Regulation.*

[69] Guryan, J., and Thompson, M. Charles River Associates. (2014). *Report on the Proposed Gainful Employment Regulation.*

subgroup that shows increased risk of student loan defaults.

One commenter stated that the regulations would have a negative effect on minority students because, on average, they do not have the existing financial resources to pay for more expensive programs and, thus, rely on debt to pay for programs leading to well-paying jobs such as medical programs. The commenter asserted that the regulations would restrict access to those programs for minority students and therefore increase disparities in economic opportunity between whites and minorities. Another commenter said the regulations are biased against institutions enrolling more first-generation college students, because these students, on average, have fewer financial resources, rely more on borrowing, and are less likely to complete the program.

On the other hand, several commenters argued that the regulations would help increase access to high-quality postsecondary education for underserved students. Based on the experience of financial aid programs—such as the Cal Grants program in California—that have tightened standards for institutions receiving State-funded student aid, commenters believed that the regulations are likely to direct more funds to programs producing positive student outcomes. They predicted that the redirection of public funding will encourage programs with strong performance to expand enrollment to meet the demands of students who would otherwise attend programs that are determined ineligible under the D/E rates measure or are voluntarily discontinued by an institution. They also argued that the regulations would encourage low-quality programs to take steps to improve outcomes of non-traditional students. One commenter predicted large financial gains for low-income and minority students who enroll in better performing programs.

Discussion: We do not agree that the regulations will substantially reduce educational opportunities for minorities, economically disadvantaged students, first-generation college students, women, and other underserved groups of students. We further disagree that the available evidence suggests that the D/E rates measure is predominantly a measure of student composition, rather than program quality. As provided in the *Regulatory Impact Analysis,* the Department's analysis indicates that the student characteristics of programs do not overly influence the performance of programs on the D/E rates measure. See ''Student Demographic Analysis of Final Regulations'' in the Regulatory Impact Analysis for a discussion of the Department's analysis.

For these regulations, the Department modified the two regression analyses it developed for the NPRM to better understand the extent to which student demographic factors may explain program performance under the regulations. As with the NPRM, the regression analyses are based on the 2012 GE informational D/E rates. We summarize the regression analysis for the annual earnings rate here.

For the annual earnings rate regression analysis, we explored the influence of demographic factors such as those cited by commenters. These were measured at the program level for the percentage of students who completed a program and have the following demographic characteristics: Zero expected family contribution estimated by the FASFA; race and ethnicity status (white, Black, Hispanic, Asian or Pacific Islander, American Indian or Alaska Native); female; independent status; married; had a mother without a bachelor's degree. [70] We held the effects of credential level and institutional sector of programs constant. The regression analysis shows that annual earnings rates results do not have a strong association with programs serving minorities, economically disadvantaged students, first-generation college students, women, and other underserved groups of students. Descriptive analyses, also provided in the RIA, further indicate that the characteristics of students attending GE programs are not strong predictors of which programs pass the D/E rates measure, further suggesting the regulations do not disproportionately negatively affect programs serving minorities, economically disadvantaged students, first-generation college students, women, and other underserved groups of students.

Although we included a regression analysis on pCDR in the NPRM, we do not respond to comments on this analysis because the regulations no longer include pCDR as an accountability metric to determine eligibility for title IV, HEA program funds.

Changes: None.

Comments: Several commenters asserted that the problems associated with low completion rates and churn would not be resolved if low-income and minority students who are attending failing programs at for-profit institutions transfer to programs at community colleges. According to these commenters, completion rates are lower at public two-year institutions than at for-profit two-year institutions.

Discussion: We disagree that the regulations will negatively affect the completion rates of low-income and minority students if, as a result of the regulations, more of these students transfer to public two-year institutions. As stated previously in this section, we acknowledge six-year certificate/degree attainment rates may be slightly lower at public two-year institutions compared to for-profit two-year institutions. However, we believe this slight difference in attainment rates is too small to provide compelling evidence that these regulations will harm low-income or minority students due to a possible shift in enrollment to public institutions. Further, as also discussed previously, one possible factor that contributes to graduation rates at public two-year institutions being lower than graduation rates at for-profit two-year institutions is that a goal of many community college programs is to prepare students to transfer from public two-year institutions into programs offered at other institutions, particularly public four-year institutions. Without taking into account transfer outcomes, differences in graduation rates among for-profit two-year institutions and public two-year institutions do not provide convincing evidence that the regulations will negatively affect completion rates.

Further, the Department would not expect that the regulations would disproportionately harm low-income or minority students, particularly where institutions raise quality to provide better outcomes for students, or where they are more selective in their admissions. Research shows that when challenged to attend more selective institutions, minority and low-income students have increased attainment, and that characteristics of institutions play a bigger role in determining student outcomes than do individual characteristics of attendees.[71] [72]

Regardless of the distinctions between programs operated by public and for-profit institutions, our estimates

[70] Please note that race and ethnicity status was derived from data reported by institutions to IPEDS. See the Regulatory Impact Analysis for additional details on methodology.

[71] Bowen, W, Chingos, M., and McPherson, M. Crossing the Finish Line: Completing College at America's Public Universities. Princeton, NJ: Princeton UP, 2009.

[72] Bound, J., Lovenheim, M., and Turner, S. 2007. ''Understanding the Decrease in College Completion Rates and the Increased Time to the Baccalaureate Degree.'' PSC Research Report No. 07–626. November 2007.

indicate that the substantial majority of programs at for-profit institutions will pass the D/E rates measure and we believe the net effect of the D/E rates measure will be that students will have the opportunity to enroll in programs at both public and for-profit institutions with better performance than programs that do not pass the D/E rates measure. In addition, students leaving a failing program at a for-profit institution may transfer to another for-profit program, but one that is performing well on the D/E rates measure.

Changes: None.

Comments: One commenter claimed the regulations do not adequately protect veteran students from deceptive practices by for-profit institutions that result in enrollment in low-quality programs. One commenter said that for-profit institutions increased recruiting of veterans by over 200 percent in just one year. Another commenter contended that 500,000 veterans dropped out of the top eight for-profit schools over the course of just one year.

Discussion: We appreciate the commenters' concerns with respect to protecting students from deceptive practices by for-profit institutions. As discussed in the NPRM, the Senate HELP Committee recently investigated deceptive practices targeted at military veterans, particularly within the for-profit sector. In its report, it noted finding extensive evidence of aggressive and deceptive recruiting practices, high tuition, and regulatory evasion and manipulation by for-profit colleges in their efforts to enroll service members, veterans, and their families.[73]

We believe that the regulations will help protect all prospective students, including veterans, from unscrupulous recruiting practices. As discussed in ''Section 668.410 Consequences of the D/E Rates Measure'' and in ''Section 668.412 Disclosure Requirements for GE Programs,'' prospective students will have the benefit of a fulsome set of disclosures about a program and its students' outcomes to inform their educational and financial decision making. Further, prospective students will be warned under § 668.410 if the program in which they intend to enroll could become ineligible based on its D/E rates for the next award year. By requiring that at least three days pass after a warning is delivered to a prospective student before the prospective student may be enrolled, the prospective student will benefit from a ''cooling-off period'' for the student to consider the information contained in the warning without direct pressure from the institution, and for the prospective student to consider alternatives to the program either at the same institution or another institution. Moreover, the accountability framework is designed to improve the quality of GE programs available to prospective students by establishing measures that will assess whether programs provide quality education and training that allow students obtain gainful employment and thereby to pay back their student loan debt. The certification requirements in § 668.414 will ensure that a program eligible for title IV, HEA program funds meets certain basic minimum requirements necessary for students to obtain gainful employment in the occupation for which the program provides training. Finally, by conditioning a program's continuing eligibility for title IV, HEA program funds on its leading to acceptable student outcomes, we believe that the D/E rates measure will help ensure that prospective students, including veterans, will be less likely to enroll in a low-quality GE program.

Changes: None.

Accountability Metrics

Comments: A number of commenters opposed the Department's proposal to use the D/E rates measure and the pCDR measure for accountability purposes. These commenters also offered suggestions for alternative metrics the Department should consider adopting in the final regulations.

D/E Rates Measure

Many commenters stated that the Department should not use the D/E rates measure as an accountability metric because it is flawed and, more specifically, would not capture the lifetime earnings gains that arise from attending a GE program. Without knowing lifetime earnings, these commenters contended, it is difficult to assess what an appropriate amount of debt is or whether a program is providing value to students. They asserted that the standard way to evaluate whether it is worthwhile to attend a postsecondary education program is to compare the full benefits against the cost. Consequently, they reasoned that the D/E rates measure is faulty because it only captures earnings after a short window of time.

Several commenters offered studies that show that a college degree leads to an annual increase in wages of somewhere between 4 to 15 percent. One commenter stated that the earnings premium between a high school graduate and a college graduate is lowest from ages 25–29 but peaks from ages 45–54. One commenter asserted that, based on an institutional survey of students five years after their graduation from associate and bachelor's degree programs that compared the students' initial 2009 median salaries to their 2014 median salaries, the students' salaries increased about 50 percent over the first five years after graduation. Thus, the commenter suggested that the regulations consider earnings no less than five years after graduation for the calculation of D/E rates.

Commenters also expressed concern that the earnings assessed by the D/E rates measure do not include other returns from higher education, such as fringe benefits, contributions to retirement accounts, subsidized insurance, paid vacations, and employment stability. Further, they contended that the D/E rates measure does not account for the social benefits that accrue to students, in addition to the pecuniary benefits. Other commenters posited that the benefits of higher education have generally trended upwards over time and so the D/E rates measure understates the future benefits of programs that provide training for occupations in growing fields, such as health care.

One commenter suggested that as a result of differences in what for-profit institutions, as opposed to community colleges, receive in the form of State subsidies, and because for-profit institutions pay taxes, any accountability metrics should be divorced from the tuition charged, and should instead focus on the earnings increase resulting from increased education, completion rates at institutions, or job or advanced degree placement rates.

Finally, one commenter claimed the D/E rates measure is not valid because it is not predictive of default outcomes. Based on the 2012 GE informational rates, the commenter claimed students in programs in the lowest performing decile under the D/E rates measure were still more than four times as likely to be in repayment than in default. The commenter stated that, if the D/E rates measure were truly an indicator of affordability, there would have been much higher default and forbearance rates for students in programs with the highest D/E rates.

pCDR Measure

A number of commenters also opposed the Department's proposal to include pCDR as an accountability metric, arguing that this metric is largely

[73] U.S. Senate, Committee on Health, Education, Labor and Pensions, For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success, Washington: Government Printing Office, July 30, 2012.

unrelated to whether a program prepares students for gainful employment. Several commenters argued that the Department lacks the legal authority to adopt pCDR to determine GE program eligibility and contended that the use of cohort default rates to assess program eligibility is contrary to the intent of Congress, because Congress never explicitly authorized the Department to use cohort default rates to assess program eligibility. The same commenters further contended that the history of congressional attention to the iCDR eligibility standard over the years, applied with periodic amendments, reflected Congress's intent that cohort default rates be used only for institutional eligibility determinations, and left no room for the Department to apply that test for programmatic eligibility. Similarly, they contended that Congress's choice to apply cohort default rates as an eligibility standard for all institutions receiving title IV, HEA program funds indicated a congressional intent that such a test should not be applied only to a subset of institutions—chiefly, for-profit schools.

Some commenters contended that the ruling by the court in *APSCU* v. *Duncan* requires the Department to base any program eligibility standard on expert studies or industry practice, or both. Because the Department did not cite to such support in the NPRM for adopting the iCDR methodology and the institutional eligibility threshold to determine program eligibility, these commenters believed the Department was barred from using cohort default rates to determine programmatic eligibility. Commenters contended that the Department provided no reasoned explanation in the NPRM for the proposed use of cohort default rates at the program level.

Commenters also asserted that the Department provided no reasoned basis for adopting a 30 percent cohort default rate as the threshold for program eligibility for title IV, HEA program funds. They asserted that the Department failed to consider the bases on which Congress, in its 2008 amendments to the HEA, increased the iCDR threshold rate from 25 percent to 30 percent. They argued that Congress, in amending the HEA to count defaults over a three-year term and raising the iCDR eligibility standard to 30 percent, recognized that setting a lower standard would deter institutions from enrolling ''minority, low-income students, or any subgroup that shows any risk of more defaults on student loans.'' The commenters conceded that iCDR was an important way to protect the Federal fiscal interest, but asserted that Congress did not consider iCDR to be a measure of educational quality, and that Congress did not consider rates greater than 30 percent to be evidence that institutions were not preparing their students adequately.

Several commenters asserted that measures of default like pCDR reflect personal decisions by individual borrowers, specifically whether or not to repay their debt, and not the performance of a program. Other commenters stated that institutions cannot control how much students borrow, or need to borrow. In this regard, commenters noted that, although institutions can control the cost of attendance, they cannot control other factors contributing to borrowing behavior, such as living expenses and the student's financial resources at the time of enrollment, and that institutions have only a limited ability to affect repayment once a student has left the institution.

Some commenters contended that the proposed pCDR measure would impose a stricter standard than the iCDR standard on which it was based, because the iCDR standard allows offset of poor results of some programs against the more successful rates achieved by other programs offered by the institution.

While some commenters considered pCDR a poor metric for the reasons described, others expressed concern that pCDR would be a poor measure of performance because institutions could encourage students struggling to repay their debt to enter forbearance or deferment in order to evade the consequences of failing the pCDR measure. They stated that programs would not be held accountable for the excessive debt burden of these students because, by pushing students into deferment or forbearance during the three-year period that the pCDR measure would track defaults, any default would occur after the time during which the program would be held accountable under the proposed regulations. Several commenters expressed concern that, because the metric is subject to manipulation, the 30 percent threshold would be too lenient and should be lower, with some commenters suggesting a 15 percent threshold.

Alternative Metrics

Commenters proposed a number of alternatives to the D/E rates and pCDR measures to assess the performance of gainful employment programs. A number of commenters, arguing that both the D/E rates and pCDR measures are too tenuously linked to what institutions do to affect the quality of training students receive, encouraged the Department to consider metrics more closely linked to student academic achievement, loan repayment behavior, or employment outcomes like job placement rates. Commenters proposed alternative metrics that they felt better account for factors that are largely outside of programs' control, such as fluctuations in local labor market conditions. Some commenters suggested that alternative metrics should be tailored to measure student outcomes in specific occupational fields, such as cosmetology or medical professions. For example, several commenters said the Department should use licensure exam pass rates and residency placement rates in tandem to evaluate medical schools. They said these metrics would take into account occupational preparedness and are better metrics than the D/E rates measure because earnings rise steadily across long periods of time among students completing medical degrees. On the other hand, one commenter expressed concern about job placement rates as a metric because there are no standard definitions of placement, national accreditation agencies each have different methodologies, and regional accreditation agencies do not require rates be reported.

A few commenters said programs should be evaluated according to metrics focusing on student success in a program. Commenters suggested the Department consider retention and graduation rates as alternative metrics, as completion of a degree or certificate program is closely linked to whether students obtain employment. One commenter criticized the Department for not including a graduation rate metric in the regulations because, based on GE informational rates, for-profit institutions with default rates higher than graduation rates have a very large percentage of programs that do not graduate enough students to meet the n-size requirements for D/E rates to be calculated. The commenter noted a similar pattern among some community colleges with very low graduation rates. The commenter also arrived at the same conclusion based on a study conducted by College Measures, a non-profit organization, which examined GE programs at 1,777 two-year public and for-profit institutions. The study referenced indicated that, among the 724 public and 24 for-profit institutions that had graduation rates below 30 percent, 29 percent of the for-profit programs with low graduation rates failed the D/E rates measure, while only

2 percent of the public institutions with low graduation rates failed the D/E rates measure. Based on this analysis, the commenter further asserted that the regulations are biased toward passing programs operated by public institutions because they do not include a graduation rate metric. According to the commenter, any program with a starting class that has fewer than 70 students and less than a 10 percent graduation rate would be automatically exempt from the regulation, even counting four years of graduates. Another commenter said the Department should focus on each program's curriculum and other aspects of the program controlled by the institution rather than the proposed metrics.

Several commenters said the Department should include a repayment rate or a negative amortization test instead of pCDR, which they viewed as unreliable and easily manipulated by institutions. Some commenters favored using a repayment rate rather than pCDR because the former would hold programs accountable for students who go into forbearance and are unable to reduce the principal balances on their loans. Other commenters asserted that a repayment rate is a preferable metric for students who choose income-based repayment plans because under such plans, students with low incomes can avoid default even though their loans are in negative amortization, making pCDR a less reliable metric than repayment rate.

Several commenters suggested specific ways in which the Department could set a passing threshold for a repayment rate or negative amortization test. Some commenters stated that the regulations should provide that programs with more than half of loans in negative amortization would be considered failing. Several other commenters said the Department should invert the pCDR measure by failing programs with less than 70 percent of students reducing the balance on their debt. One commenter asserted that the Department should include a repayment rate metric based on the repayment definition from the 2011 Prior Rule. The commenter suggested that 45 percent would be an appropriate passing threshold for a repayment rate based on Current Population Survey (CPS) census data that estimates that 46.2 percent of young adults with a high school diploma could possibly afford student debt payments.

Some commenters argued the Department has adequate expertise and authority, as the issuer of all Federal Direct Loans, to set a loan repayment threshold appropriate for its own loan portfolio without needing to rely on an unrelated external standard. Additionally, commenters suggested the Department convene a panel of experts to set a repayment rate threshold for the regulations. One commenter said the Department should use available data to set a repayment rate threshold that would be difficult for programs to manipulate.

A few commenters offered what they believed are limitations of relying on a repayment rate metric. One commenter said the regulations should not include a repayment rate metric because such a standard would disproportionately affect programs providing access to low-income and minority students. Another commenter suggested that if the Department includes a repayment rate metric in the regulations, it should prohibit institutions from making loan payments on students' behalf in an attempt to increase the proportion of students counted as successfully in repayment. As an alternative to pCDR or a repayment rate metric, one commenter proposed that the regulations evaluate iCDR and the percentage of enrolled students borrowing to set an eligibility standard that would identify and curtail abuses in the short run and suspend program participation if both iCDR and borrowing rates are high.

Some commenters believed that, if the 90/10 provisions in section 487(a)(24) of the HEA limiting the percentage of revenue for-profit institutions may receive from title IV, HEA programs were eliminated, there would be no need for the D/E rates measure. Several commenters said the 90/10 provisions should be modified to include GI benefits and other Federal sources of aid. Some commenters argued that the 90/10 provisions should be modified to provide for an 85/15 ratio such that a for-profit institution receiving more than an 85 percent share of revenue from title IV, HEA programs and other Federal programs would be determined ineligible to participate in the title IV, HEA programs.

Other commenters asked the Department to set standards that would cap the prices charged or amount of loans disbursed for different kinds of programs. For instance, one commenter proposed that loan disbursements could be capped for all cosmetology programs based on the average earnings of individuals who enter the field.

Several commenters contended the Department should use risk-adjusted lifetime earnings gains net of the average cost of program attendance as an alternative metric. One commenter suggested that the regulations consider earnings before and after attendance in a program in order to measure program success. The commenter also argued that the amount of debt incurred should not be used to measure the success of a program.

Discussion

D/E Rates Measure

Although the creation of a program ''value added'' measure using some function of earnings gains may provide some information on program quality, we disagree that it is more appropriate than the D/E rates measure as a basis for an eligibility standard. We do not believe it is aligned with the accountability framework of the regulations, which is based on discouraging institutions from saddling students with unmanageable amounts of debt. Furthermore, the commenters have failed to establish an appropriate standard supported in the research that demonstrates how such a measure could be used to determine whether a program adequately prepares students for gainful employment in a recognized occupation.

The accountability framework of the regulations focuses on whether students who attend GE programs will be able to manage their debt. As we discussed in the NPRM, the gainful employment requirements are tied to Congress' historic concern that vocational and career training offered by programs for which students require loans 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 students to borrow was expected to neither unduly burden the students nor pose ''a poor financial risk'' to taxpayers. In authorizing federally backed student lending, Congress considered expert assurances that vocational training would enable graduates to earn wages that would not pose a ''poor financial risk'' of default.

Congress' decision in this area is supported by research that shows that high levels of debt and default on student loans can lead to negative consequence for borrowers. There is some evidence suggesting that high levels of student debt decrease the long-term probability of marriage.[74] For those who do not complete a degree, greater amounts of student debt may raise the probability of bankruptcy.[75] There is also evidence that high levels of debt

[74] Gicheva, D. ''In Debt and Alone? Examining the Causal Link between Student Loans and Marriage.'' Working Paper (2012).

[75] Gicheva, D., and U. N. C. Greensboro. ''The Effects of Student Loans on Long-Term Household Financial Stability.'' Working Paper (2013).

increase the probability of being denied credit, not paying bills on time, and filing for bankruptcy—particularly if students underestimate the probability of dropping out.[76] Since the Great Recession, student debt has been found to be associated with reduced home ownership rates.[77] And, 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.[78]

Further, when borrowers default on their loans, everyday activities like signing up for utilities, obtaining insurance, and renting an apartment can become a challenge. Such borrowers become subject to losing Federal payments and tax refunds and wage garnishment.[79] Borrowers who default might also be denied a job due to poor credit, struggle to pay fees necessary to maintain professional licenses, or be unable to open a new checking account.[80] As a responsible lender, one important role for the Department is to hold all GE programs to a minimum standard that ensures students are able to service their debt without undue hardship, regardless of whether students experience earnings gains upon completion.

Research has consistently demonstrated the significant benefits of postsecondary education. Among them are private pecuniary benefits [81] such as higher wages and social benefits such as a better educated and flexible workforce and greater civic participation.[82] [83] [84] [85] Even though the costs of postsecondary education have risen, there is evidence that the average financial returns to graduates have also increased.[86]

We recognize the value of programs that lead to earnings gains and agree that gains are essential. However, we believe that the D/E rates measure, rather than a measure of earnings gains, better achieves the objectives of these regulations because it assesses earnings in the context of whether they are at a level that would allow borrowers to service their debt without serious risk of financial or emotional harm to students and loss to taxpayers.

We also disagree with commenters who claim a low correlation between D/E rates and default undermines D/E rates as an indicator of financial risk to students. As our discussion of the D/E rates thresholds provides in more detail, our analyses indicate an association between ultimate repayment outcomes, including default, and D/E rates. Based on the best data available to the Department, graduates of programs with D/E rates above the passing thresholds have higher default rates and lower repayment rates than programs below the thresholds. Although many other factors may contribute to default outcomes, we believe high D/E rates are an important indicator of financial risk and possibility of default on student loans. In addition to addressing Congress' concern of ensuring that students' earnings would be adequate to manage their debt, research also indicates that debt-to-earnings is an effective indicator of unmanageable debt burden. An analysis of a 2002 survey of student loan borrowers combined borrowers' responses to questions about perceived loan burden, hardship, and regret to create a ''debt burden index'' that was significantly positively associated with borrowers' actual debt-to-income ratios. In other words, borrowers with higher debt-to-income ratios tended to feel higher levels of burden, hardship, and regret.[87]

Further, although annual earnings may increase for program graduates over the course of their lives as a result of additional credentialing, the Department disagrees that this fact undermines the appropriateness of determining eligibility based on the D/E rates measure. Borrowers are still responsible for managing debt payments, which begin shortly after they complete a program, even in the early stages of their career.

Repayment under the standard repayment plan is typically expected to be completed within 10 years; the return on investment from training may well be experienced over a lifetime, but benefits ultimately available over a lifetime may not accrue soon enough to enable the individual to repay the student loan debt under and within the schedules available under the title IV, HEA programs. These regulations evaluate debt service using longer repayment terms than the typical 10-year plan, taking into account our experience with the history of actual borrower repayment and the use of forbearances and deferment. However, even the extended repayment expectations we use to amortize debt under the D/E rates measure (10, 15, and 20 years for non-baccalaureate credentials, baccalaureate and master's degrees, and doctoral or professional degrees, respectively) do not encompass a lifetime of benefits. Rather, we believe it is important to measure whether the ratio of debt to earnings indicates whether a student is able to manage debt both in the early years after completion, and in later years, since students must be able to sustain loan payments at all stages, regardless of the benefits that may accrue to them over their entire career.

pCDR Measure

As we discussed in the NPRM, the Department's proposal to include pCDR as a measure of whether a program prepares students for gainful employment in a recognized occupation is, like the D/E rates measure, grounded both in statute and legislative history. We included the pCDR measure as an accountability metric in the proposed regulations because it would measure actual repayment outcomes and because it would assess the outcomes of both students who completed a GE program and those who had not. Both reasons are responsive to the concerns of Congress in making the student aid loan programs available to students in career training programs. As previously discussed, the legislative history regarding GE programs shows that Congress considered these programs to warrant eligibility on the basis that they would produce skills and, therefore, earnings at a level that would allow students to manage their debt. This concern extended not only to students who completed a program, but also to those who transferred or dropped out of a program. Accordingly, to measure whether a program is leading to

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[76] *Id.*

[77] 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.

[78] 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.*

[79] *https://studentaid.ed.gov/repay-loans/default.*

[80] *www.asa.org/for-students/student-loans/managing-default/.*

[81] 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.

[82] 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.

[83] Kane, Thomas J., and Rouse, C. E. (1995). Labor Market Returns to Two- and Four-Year College. *The American Economic Review,* 85 (3), 600–614.

[84] Cellini, Stephanie R. and Chaudhary, L. (2012). ''The Labor Market Returns to For-Profit College Education.'' Working paper.

[85] Baum, S., Ma, J., and Payea, K. (2013) ''Education Pays 2013: The Benefits of Education to Individuals and Society'' College Board. Available at *http://trends.collegeboard.org/.*

[86] 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.

[87] Baum, S. & O'Malley, M. (2003). College on credit: How borrowers perceive their education debt. Results of the 2002 National Loan Survey (Final Report). Braintree, MA: Nellie Mae.

unmanageable debt for both students who complete a program and those who do not, we proposed adopting the identical eligibility threshold for pCDR that Congress established for iCDR.

The Department strongly believes in the importance of holding GE programs accountable for the outcomes of students who do not complete a program and ensuring that institutions make strong efforts to increase completion rates. As previously discussed, many commenters offered alternate metrics for the Department to consider adopting, including those that would measure the outcomes of students who do not complete their programs. Given the wealth of feedback we received on this issue through the comments, we believe further study is necessary before we adopt pCDR or another accountability metric that would take into account the outcomes of students who do not complete a program. We also believe further study is necessary before adopting other metrics based on CDR, including ''borrowing indices'' that take into account iCDR and the percentage of students who take out loans at the institution. Using the information we will receive from institutions through reporting, we will continue to develop a robust measure of outcomes for students who do not complete a program, which may include some measure based on repayment behavior. Because pCDR has been removed as an accountability metric, we do not specifically address the comments related to its operation for accountability purposes.

Despite our decision not to use pCDR as an accountability metric, we continue to believe in the importance of holding GE programs accountable for the outcomes of students who do not complete a program and ensuring that institutions make strong efforts to increase completion rates. Default rates are important information for students to consider as they decide where to pursue, or continue, their postsecondary education and whether or not to borrow to attend a particular program. Accordingly, we are retaining pCDR as one of the disclosures that institutions may be required to make for GE programs under § 668.412. We believe that requiring this disclosure, along with other potential disclosures such as completion, withdrawal, and repayment rates, will bring accountability and transparency to GE programs with high rates of non-completion.

Alternative Metrics

We appreciate the suggestions to use retention rates, employment or job placement rates, and completion rates as alternative measures to the D/E rates measure. While these are all valid and useful indicators for specific purposes, there is no evidence that any of these measures, by themselves, indicates whether a student will be likely to repay his or her debt. For example, placing a student in a job related to the training provided by a program is a good outcome, but without considering any information related to the student's debt or earnings, it is difficult to say whether the student will be able to make monthly loan payments. We also disagree that the D/E rates measure is tenuously linked to the performance of programs because it does not take into account these alternative metrics. We believe the measure appropriately holds programs accountable for whether students earn enough income to manage their debt after completion of the program.

We do not agree that, without a graduation rate metric, poorly performing programs will not be held accountable under the regulations due to having an insufficient number of students who complete the programs to be evaluated under the D/E rates measure. First, in order to address this concern, we calculate the D/E rates measure over a four-year cohort period for small programs in order to make it more likely that programs with low graduation rates are evaluated. Second, although the regulations do not include pCDR as an accountability metric, they will require programs to disclose completion rates and pCDR to students and we believe these disclosure items will help students and families make more informed enrollment decisions. Third, as previously stated, the focus of the D/E rates measure is to hold programs accountable for whether students are able to manage their debt after completion, and we do not believe it is appropriate to base eligibility for title IV, HEA program funding on a metric, such as graduation rate, that does not indicate whether a student will be likely to repay his or her debt.

We disagree with comments suggesting we tailor alternative metrics to measure student outcomes in specific occupational fields, such as cosmetology or medical professions. It is neither feasible nor appropriate to apply different metrics to different kinds of programs. By itself, the occupation an individual receives training for does not by itself determine whether debt is manageable. Rather, it is related to the debt that the individual accumulates and the earnings achieved as a result of the program's preparation—exactly what the D/E rates measure assesses.

Similarly, we believe it is inappropriate to rely on licensure exam pass rates and residency placement rates to evaluate medical programs and other graduate programs. There is no evidence that any of these measures, by themselves, would indicate whether a student will be likely to be able to repay his or her debt.

We also disagree that programs should be evaluated according to each program's curriculum and other aspects of the program controlled by the institution rather than under the D/E rates measure. Although factors such as program curriculum and quality of instruction may contribute to the value of the training students receive, other factors such as earnings and student debt levels affect whether students are able to manage their debt payments after completion. Accordingly, we believe it is more appropriate to evaluate programs based on the outcomes of their students after completion, rather than the curricular content or educational practices of the institutions operating the programs.

We continue to believe that a repayment rate metric is an informative measure of students' ability to repay their loans and an informative measure of outcomes of both students who do and do not complete a program. However, as discussed in the NPRM, we have been unable to determine an appropriate threshold for distinguishing whether a program meets the minimum standard for eligibility. We have not identified any expert opinion, nor has any statistical analysis demonstrated, that a particular level of repayment should serve as an eligibility standard. We appreciate suggestions for repayment rate thresholds of 70 percent and 45 percent. Commenters indicated 70 percent may be appropriate because it seems to correspond to 100 percent minus 30 percent, the threshold for iCDR. We do not believe this rationale is sufficient as repayment rate reflects the percentage of students reducing the principal on their loans, rather than the percentage of students avoiding default. The commenter who recommended 45 percent relied on Census data for justification. However, we have been unable to identify any specific support in the Census data for this proposition.

The Department's status as lender does not eliminate the need to support any standard adopted to define eligibility. As a result, we decline to adopt a repayment-based eligibility metric at this time.

Similarly, we lack expert opinion or statistical analysis that would support other metrics and thresholds based on borrower repayment. For example, we

are unable to identify expert opinion or statistical analysis that supports negative amortization as a metric, or the proposed 50 percent threshold, as an appropriate measure for whether students are able to manage their debt. Some students who have chosen income-based or graduated repayment plans may be able to manage their debt payment, but are observed as being in negative amortization. On the other hand, students who reduce the principal on their debt may be earning too little to manage their debt without experiencing financial hardship.

Finally, with respect to suggestions that the 90/10 provisions should be modified, we note that such changes are beyond the Department's regulatory authority because the 90/10 requirements are set in statute. Moreover, even if the Department had authority to change the 90/10 provisions, we do not believe doing so would serve the purposes of these regulations. First, the 90/10 provisions measure the revenues of institutions, not students' ability to repay debt accumulated as a result of enrolling in a GE program. Second, the provisions apply only to for-profit institutions and could not be equally applied to GE programs in other sectors.

Changes: We have removed pCDR as an accountability metric. Other changes affecting the use of pCDR as a disclosure item are discussed in ''Section 668.413 Calculating, Issuing, and Challenging Completion Rates, Withdrawal Rates, Repayment Rates, Median Loan Debt, Median Earnings, and Program Cohort Default Rate.''

Because the final regulations include only the D/E rates measure as an accountability metric, we have removed the term and definition of ''GE measures'' from § 668.402.

Comments: Commenters posited that because the D/E rates measure does not measure actual benefits, it would have the effect of artificially reducing program prices and, as a result, lowering quality and academic standards.

Discussion: The Department disagrees that the D/E rates measure will result in GE programs with lower educational quality or less rigorous academic standards than they would have in the absence of the regulations. According to our data, the great majority of GE programs in all sectors will pass the D/E rates measure. Hence, most programs will not have to lower their prices as a result of the D/E rates measure.

Programs with high D/E rates will have several ways to ensure that the performance of their programs meet the standards of the regulations while maintaining or improving the quality of the training they provide, such as: Providing financial aid to students with the least ability to pay in order to reduce the number of students borrowing and the amount of debt that students must repay upon completion; improving the quality of the vocational training they offer so that students are able to earn more and service a larger amount of debt; and decreasing prices for students and offsetting any loss in revenues by reducing institutional or program expenditures in areas not affecting programs quality, such as administrative overhead, recruiting, and advertising.

Changes: None.

Comments: One commenter asserted that short periods of attendance at GE programs may provide students with benefits not measured by the D/E rates or pCDR measures because underserved students can still acquire some skills even if they do not complete their program. The commenter argued that the regulations should recognize the benefits associated with partial completion of a program as a positive outcome by relying on a metric that measures incremental increases in the net present value of earnings. The commenter stated that the proposed regulations would not accomplish this because the D/E rates measure does not include the outcomes of students who do not complete a program and the pCDR measure punishes all ''churn,'' regardless of whether partial completion may have some positive benefits.

Discussion: We do not agree that the regulations should specifically recognize partial completion. Although students, including those from underserved backgrounds, may gain some benefit from attending a GE program even if they do not complete, we do not believe that some other negative outcome, such as high debt burden in the case of the D/E rates measure, should be ignored. Further, these students would presumably benefit even more by reaching completion.

Changes: None.

Comments: A few commenters said the D/E rates measure is flawed because it treats short-term certificate programs the same as graduate programs. The commenters said certain programs, such as certificate programs, are designed to leave graduates with little debt, but more short-term earnings gains, while graduate programs may produce larger debt levels, but have larger increases in lifetime earnings. Commenters suggested that the Department establish an alternative metric that takes into account the fact that students in professional graduate programs take out large amounts of debt but earn high enough lifetime earnings to service that debt.

Discussion: We believe that the D/E rates measure is an appropriate metric to assess all GE programs, including graduate professional programs. These regulations will help ensure that students who attend GE programs are able to manage their debt. Although graduates of professional programs may experience increased earnings later, as discussed previously, earnings must be adequate to manage debt both in the early years after entering repayment and in later years, regardless of what an individual's lifetime earnings may be.

Further, as discussed later in this section, the discretionary income rate will help accurately assess programs that may result in higher debt that may take longer to repay but also provide relatively higher earnings. Also, as discussed in ''Section 668.404 Calculating D/E Rates,'' the regulations apply a relatively longer 20-year amortization period to the D/E rates calculation for graduate programs, and assess earnings for medical and dental programs at a later time after completion to account for time in a required internship or residency.

Changes: None.

D/E Rates Thresholds

Comments: Some commenters suggested that the D/E rates thresholds should be those established in the 2011 Prior Rule—a discretionary income rate threshold of 30 percent and an annual earnings rate threshold of 12 percent. Commenters suggested that because the D/E rates thresholds in these regulations differ from those in the 2011 Prior Rule, the D/E rates thresholds are arbitrary.

Other commenters cited studies and data in support of alternative thresholds and stated that the Department's choice of thresholds more stringent than those they believed were supported by the studies is arbitrary and capricious, particularly in their application to the for-profit industry.

Commenters argued the 12 percent threshold for the annual earnings rate is inappropriate because, based on an NCES study, a substantial percentage of first-time bachelor's degree recipients have an annual income rate greater than 12 percent.[88] The study analyzed earnings and debt levels collected by NCES in its 1993/94, 2000/01, and 2008/09 Baccalaureate and Beyond Longitudinal Studies Survey. According to the study, in 2009, 31 percent of bachelor's degree recipients who borrowed and entered repayment had an annual income rate greater than 12

[88] NCES, ''Degrees of Debt,'' NCES 2014–11.

percent one year after graduation. Commenters noted 26 percent of recipients who borrowed at public institutions and 39 percent of recipients who borrowed at private, non-profit institutions exceeded the 12 percent threshold, suggesting the threshold for the annual earnings rate is too low. Commenters also contended the annual earnings rate threshold is inappropriately low because the same study indicated the average monthly loan payment as a percentage of income among bachelor's degree recipients who borrowed, were employed, and were repaying their loans one year after graduation was about 13 percent in 2009.

One commenter reached similar conclusions based on a study that used Beginning Postsecondary Students Longitudinal Study (BPS) data to indicate annual earnings rates are, on average, about 10.5 percent among all bachelor's degree recipients six years after enrollment.[89]

According to some commenters, a 2010 study conducted by Mark Kantrowitz indicates that the majority of personal finance experts believe that an acceptable annual debt-to-earnings ratio falls between 10 percent and 15 percent.[90] These commenters suggested that the Department's reliance on research conducted by Sandy Baum and Saul Schwartz in 2006 in establishing the 8 percent annual earnings rate threshold is arbitrary. The commenters stated that Baum and Schwartz acknowledge that the 8 percent threshold is based on mortgage underwriting practices, and they believe that there is not sufficient research to justify using an 8 percent annual earnings rate in the context of the regulations. Specifically, the commenters stated that Baum and Schwartz criticized the 8 percent threshold as not necessarily applicable to higher education loans because the 8 percent threshold (1) reflects a lender's standard of borrowing, (2) is unrelated to individual borrowers' credit scores or their economic situations, (3) reflects a standard for potential homeowners rather than for recent college graduates who generally have a greater ability and willingness to maintain higher debt loads, and (4) does not account for borrowers' potential to earn a higher income in the future. Commenters emphasized that Baum and Schwartz believe that using the difference between the front-end and back-end ratios historically used in the mortgage industry as a benchmark for manageable student loan borrowing has no particular merit or justification. The commenters believed the Department should recognize that borrowing for education costs is different from borrowing for a home mortgage because education tends to cause earnings to increase. As a result, the commenters believed the Department should increase the threshold.

Some commenters contended that the research by Baum and Schwartz also suggests that increased burden beyond the 8 percent annual earnings rate may be a conscious choice by those early in a career to take on increased burden and that the research justifies an annual earnings rate threshold of 12 to 18 percent, and a discretionary income rate threshold of 30 to 45 percent as ''reasonable.'' [91] One commenter said the Department could arrive at an annual earnings rate threshold higher than 8 percent using a methodology similar to the one cited by the Department in the NPRM. Specifically, the commenter said a higher threshold is justified by regulations issued by the Consumer Financial Protection Bureau (CFPB) that became final on January 10, 2014, defining the total debt service-to-earnings ratio at 43 percent for the purpose of a qualified mortgage. Moreover, the commenter cited the 2008 consumer expenditures survey showing that, on average, associate degree recipients pay 27 percent of income and bachelor's degree recipients pay 25 percent of income toward housing costs, including mortgage principal and interest. Thus, the commenter said this would yield 16 percent and 18 percent of income available to pay for other debt, such as education-related loans. The commenter also asserted a higher annual earnings rate threshold is warranted because some mortgage lenders use a 28 percent to 33 percent threshold for mortgage debt, which still leaves 10 percent to 15 percent of income available for other debt.

Some commenters suggested that the Department should base the annual earnings rate threshold on a 2003 GAO study ''Monitoring Aid Greater Than Federally Defined Need Could Help Address Student Loan Indebtedness'' (GAO–03–508).[92] Commenters said that the GAO study indicated that 10 percent of first-year income is the generally agreed-upon standard for student loan repayment and that the Department itself established a performance indicator of maintaining borrower indebtedness and average borrower payments for Federal student loans at less than 10 percent of borrower income in the first repayment year in the Department's ''FY 2002 Performance and Accountability Report.'' [93]

One commenter suggested that title IV, HEA program funds that students use to pay room and board costs should be factored into the D/E rates calculations because these funds are allowed to be used for those purposes and schools may be tempted to shift costs between tuition and room and board in order to create more favorable D/E rates. The commenter proposed that if these costs are factored into the D/E rates calculations, the passing thresholds should be increased from 8 percent to 15 percent for the annual earnings rate and from 20 percent to 30 percent for the discretionary income rate.

One commenter criticized the D/E rates measure and the thresholds of 8 and 20 percent because they would be sensitive to changes in the interest rate. The commenter explained that an increase in the interest rate would yield a lower maximum allowable total annual debt service amount as a percentage of annual earnings, since the monthly payment will be higher. For example, the commenter noted that an increase in the loan interest rate to 6.8 percent would increase the annual debt service amount, and therefore the debt-to-annual earnings ratio of a program, significantly, making it more difficult for institutions to pass the D/E rates measure.

Some commenters suggested that the 8 percent annual earnings rate and 20 percent discretionary income rate are too high to support sustainable debt levels. Commenters suggested that the annual earnings rate threshold is too high because, as Baum and Schwartz

[89] 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.

[90] Kantrowitz, M. (2010). Finaid.com. *What is Gainful Employment? What is Affordable Debt?,* available at *www.finaid.org/educators/20100301gainfulemployment.pdf.*

[91] Baum, S., and Schwartz, S. (2006). How Much Debt is Too Much? Defining Benchmarks for Managing Student Debt.

[92] The GAO report was not undertaken to determine acceptable debt burdens, but rather, as stated in the report, ''to determine how often students who were federal financial aid recipients received aid that was greater than their federally defined financial need.'' GAO–03–508 at 19. The report contains neither an analysis of debt burden nor reference to the 10 percent debt burden rate as a ''generally-agreed upon'' standard; the GAO report merely cites, without comment, the 10 percent figure as a Department performance indicator.

[93] The Department used the 10 percent debt/income indicator without elaboration. The stated purpose of the indicator was for the Department to assess its own progress in meeting certain standards, including the debt-to-earnings ratios of students. See page 165, available at *http://www2.ed.gov/about/reports/annual/2002report/index.html.*

explained, a supportable annual earnings rate of 8 percent assumes that all non-housing debts do not exceed 8 percent of annual income. Commenters suggested that all other debts, including, but not exclusively, student loan debts, should be included in that 8 percent threshold, and, thus, the Department should provide a buffer to borrowers with other debts and investments to ensure sustainable debt levels. Other commenters suggested that the D/E rates thresholds are too high because they do not account for other educational costs (beyond tuition, fees, books, supplies, and equipment) which may limit students' ability to repay debt.

In recommending that the annual earnings rate threshold be strengthened, some commenters noted that allowing a passing threshold of up to 8 percent for student loan debt alone already fails to account for a student's other debts, but allowing up to 12 percent before a program is failing the D/E rates measure is without a sound rationale and should be eliminated from the regulations after a phase-in period.

Commenters also noted that a student's debt is likely to be understated because the same interest rate that is used for calculating the annual debt service for Federal Direct Unsubsidized loans would also be used to calculate the debt service of private education loans, which are used more by students attending for-profit institutions, and which typically have rates equal to, or higher, than the Direct Unsubsidized loan rate. For these reasons, the commenters argued that the Department should avoid using any threshold higher than 8 percent of annual earnings.

With respect to the discretionary income rate threshold, commenters suggested that changes made by section 2213 of the Student Aid and Fiscal Responsibility Act (SAFRA) to lower the cap on allowable income-based repayments from 15 percent to 10 percent of discretionary income support a lower discretionary income rate threshold.[94] Furthermore, commenters stated that the 20 percent discretionary income rate threshold recommended by Baum and Schwartz provides an absolute maximum discretionary income rate that anyone could reasonably pay and that should never be exceeded. Accordingly, the commenters contended that the discretionary income rate thresholds for the D/E rates measure are far too high.

Discussion: We do not agree with the commenters that argued for passing D/E rates thresholds of 12 percent of annual earnings and 30 percent of discretionary income, rather than 8 percent and 20 percent. Instead, we establish 12 percent and 30 percent as the upper boundaries of the zone. Although these thresholds differ from those established in the 2011 Prior Rule, they are supported by a reasoned basis as we outlined in the NPRM and in the following discussion.

We first clarify the difference between the term ''debt'' as used in the D/E rates measure and as used in the literature and opinions on which those commenters who consider the D/E rates thresholds too strict rely. In connection with the 2011 Prior Rule and during the negotiated rulemaking process for these regulations, institutional representatives repeatedly stressed the inability of institutions to control the amount of debt that their students incurred.[95] In response to that concern, in § 668.404(b)(1) of the regulations, the Department limits the amount of debt that will be evaluated under the D/E rates measure to the amount of tuition and fees and books, supplies, and equipment, unless the actual loan amount is smaller—in which case the Department evaluates the actual loan amount, including any portion taken out for living expenses. Thus, the D/E rates measure will typically capture, as a commenter noted, not the actual total student debt, but only a portion of that debt—up to the amount of direct charges. The commenters cite analysis and authority opining that the appropriate levels of student loan debt that borrowers can manage are in the range of 10 percent to 15 percent of annual income.[96] That position is not inconsistent with the standard we adopt here because those opinions address the actual student loan debt that borrowers must repay—what could be called the borrower's real debt burden. That approach is reasonable when addressing actual borrower debt burden, and it is the Department's approach when calculating the debt burden for an individual student borrower in other regulations. *See, e.g.,* section 2213 of the SAFRA and 34 CFR 685.209. In contrast, the D/E rates measure assesses aggregate debt burden for a cohort of borrowers, and does so using a formula that holds the institution accountable only for the borrowing costs under its control—tuition, fees, books, equipment, and supplies. Accordingly, we decline to raise the annual earnings rate threshold to 12 percent and discretionary income rate threshold to 30 percent to capture the total amount borrowed; and we also decline to lower the rates to below 8 percent and 20 percent, respectively, to account for the exclusion of other debt.

In reference to the comment suggesting that title IV, HEA program funds that students use to pay room and board costs should be factored into the D/E rates calculations, we continue to believe that, for the purpose of the D/E rates measure, loan debt should be capped at the amount charged for tuition and fees and books, supplies, and equipment, because those costs are within an institution's control. We do not believe that it is reasonable to include room and board charges in the amount at which loan debt is capped. Unlike tuition and fees, books, equipment, and supplies, costs which all students must pay for, room and board are within the choice of the student, and their inclusion runs counter to the general position that we hold schools accountable under these metrics for those costs that are under their control. Costs of room and board—or allowance for room and board, for students not in institutional housing—vary from institution to institution, depend on the housing choices actually available to, as well as the choices within those options of, individuals, and even the locale of the available housing choices. Including room and board would not only appear impracticable but difficult to implement in a manner that treats similar or identical programs in an evenhanded manner for accountability purposes as well as disclosure purposes.

We also disagree with the commenters who believe the failing thresholds should be lower because the debt payment calculations do not take into account debt other than student loan debt. Because of the substantial negative consequences associated with a program's loss of title IV, HEA program eligibility, we believe it is appropriate to maintain the failing thresholds at 12 percent and 30 percent. Some programs may enroll students with very little debt other than the debt they accrue to attend their program. Decreasing the failing thresholds on the basis that students, on average, accrue non-educational debt

[94] Healthcare and Education Reconciliation Act of 2010, Public Law 111–152, § 2213, March 30, 2010, 124 Stat 1029, 1081.

[95] Indeed, in the notice of proposed rulemaking for the 2011 Prior Rule, the Department proposed counting the full amount of loan debt for calculating the debt-to-earnings ratios. 75 FR 43639. In response to comments, in the 2011 Prior Rule, the Department capped the loan debt at the lesser of tuition and fees or the total amount borrowed. 76 FR 34450.

[96] *See, e.g.,* Kantrowitz, M. (2010). Finaid.com. *What is Gainful Employment? What is Affordable Debt?,* available at *www.finaid.org/educators/20100301gainfulemployment.pdf.* The article addresses the proposed standard included in the notice of proposed rulemaking for the 2011 Prior Rule, which included all debt, and states ''The most common standards promoted by personal finance experts are 10% and 15% of [gross] income.'' At 10.

would risk setting an overly strict standard for some programs.

We also clarify that, as discussed in ''§ 668.404 Calculating D/E Rates,'' we calculate interest rates for the annual debt payment using a sliding scale average based on the credential level of a program and, for most students, these interest rates are below the actual interest payments made by students. Although we agree the interest rates used in the calculation of D/E rates, as discussed in ''§ 668.404 Calculating D/E Rates,'' for most programs, result in debt calculations that are conservatively low estimates of the actual debt payments made by students, we disagree with the commenters arguing that we should set the failing thresholds for the D/E rates below 12 percent and 30 percent because of our interest rate assumptions. Since the interest rates used in the calculation of the D/E rates measure are conservatively low estimates of the actual debt payment made by students, we also disagree with the commenters who believe the D/E rates thresholds are too low because they are sensitive to interest rates.

As we stated in the NPRM, the 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.[97] Specifically, Baum and Schwartz proposed a benchmark for a manageable debt level of not more than 20 percent of discretionary income. That is, they proposed that borrowers have no repayment obligations that exceed 20 percent of their income, a level they found to be unreasonable under virtually all circumstances.[98] The passing threshold of 8 percent for the annual earnings rate 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.[99]

Additionally, the 8 percent cutoff has long been referred to as a limit for student debt burden. Several studies of student debt have accepted the 8 percent standard.[100] [101] [102] [103] Some State agencies have established guidelines based on this limit. In 1986, the National Association of Student Financial Aid Administrators identified 8 percent of gross income as a limit for excessive debt burden.[104] Finally, based on a study that compared borrowers' perception of debt burden versus their actual debt-to-earnings ratios, Baum and O'Malley determined that borrowers typically feel overburdened when that ratio is above 8 percent.[105]

We note that we disagree with the characterization of some commenters that the paper by Baum and Schwartz that we rely on for support of the 20 percent discretionary income rate threshold rejects the 8 percent annual earnings rate threshold and that for this reason, a higher threshold for the annual earnings rate is more appropriate.[106] In their review of relevant literature, Baum and Schwartz specifically acknowledge the widespread acceptance of the 8 percent standard and conclude that, although it is not as precise as a standard based on a function of discretionary earnings, it is ''not . . . unreasonable.'' [107] Further, drawing from their analysis of manageable debt in relation to discretionary earnings, Baum and Schwartz recommend a sliding scale limit for debt-to-earnings, based on the level of discretionary earnings, that results in a ''maximum Debt-Service Ratio'' standard generally stricter than 8 percent.[108]

More recently, financial regulators released guidance that debt service payments from all non-mortgage debt should remain below 12 percent of pretax income. In particular, current Federal Housing Administration (FHA) underwriting standards set total debt at an amount not exceeding 43 percent of annual income, a standard that, as noted by a commenter, was adopted by the CFPB in recently published regulations, with housing debt comprising no more than 31 percent of that total income, leaving 12 percent for all other debt, including student loan debt, car loans, and all other consumer debt.[109] That 12 percent is consumed by credit card debt (2.25 percent) and by other consumer debt (9.75 percent), which includes student loan debt. [110] The 2010 Federal Reserve Board Survey of Consumer Finances found that student debt comprises ''among families headed by someone less than age 35, 65.6 percent of their installment debt was education related in 2010.'' [111] Eight percent is an appropriate minimum standard because it falls reasonably within the 12 percent of gross income allocable to non-housing debt under current lending standards as well as the 9.75 percent of gross income attributable to non-credit card debt.[112] Thus, we disagree with

[97] 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.

[98] *Id.*

[99] *Id.* at 2–3.

[100] Greiner, K. (1996). How Much Student Loan Debt Is Too Much? *Journal of Student Financial Aid, 26*(1), 7–19.

[101] Scherschel, P. (1998). Student Indebtedness: Are Borrowers Pushing the Limits? USA Group Foundation.

[102] Harrast, S.A. (2004). Undergraduate Borrowing: A Study of Debtor Students and their Ability to Retire Undergraduate Loans. *NASFAA Journal of Student Financial Aid, 34*(1), 21–37.

[103] King, T., & Frishberg, I. (2001). *Big Loans, Bigger Problems: A Report on the Sticker Shock of Student Loans.* Washington, DC: The State PIRG's Higher Education Project. Available at *www.pirg.org/highered/highered.asp?id2=7973.*

[104] Illinois Student Assistance Commission (2001). Increasing College Access . . . or Just Increasing Debt? A Discussion about Raising Student Loan Limits and the Impact on Illinois Students.

[105] Baum, S., and O'Malley, M. (2002, February 6). College on Credit: How Borrowers Perceive their Education Debt: Results of the 2002 National Student Loan Survey. Final Report. Braintree, MA: Nellie Mae Corporation.

[106] Baum, S., and Schwartz, S. (2006). How Much Debt is Too Much? Defining Benchmarks for Managing Student Debt.

[107] *Id.,* at 3.

[108] *Id.,* at 12, Table 10

[109] FHA, Risk Management Initiatives: New Manual Underwriting Requirements, 78 FR 75238, 75239 (December 11, 2013).

[110] Vornovytskyy, M., Gottschalck, A., and Smith, A., *Household Debt in the U.S.: 2000 to 2011,* U.S. Census Bureau, Survey of Income and Program Participation Panels. Available at *www.census.gov/people/wealth/files/Debt%20Highlights%202011.pdf.* Table A–2 shows that median credit card debt of households under 35 years of age as of 2011 was $3,000, and median other unsecured debt for that same cohort, including student loans and other unsecured debt, was $13,000. The ''other'' debt accounts for 81 percent of unsecured household debt. Assuming that the lending standards described here allocate 12 percent to non-housing debt, and 81 percent of that allocation is 9.75 percent allocable to non-credit card debt, which includes student loan debt, the 8 percent annual earnings rate appears to fall within this range.

[111] Bricker, J., Kennickell, A., Moore, K., and Sabelhaus, J. (2012). ''Changes in U.S. Family Finances from 2007 to 2010: Evidence from the Survey of Consumer Finances,'' *Federal Reserve Bulletin,* 98(2). Available at *www.federalreserve.gov/pubs/bulletin/2012/pdf/scf12.pdf.*

[112] Vornovytskyy, M., Gottschalck, A., and Smith, A., *Household Debt in the U.S.: 2000 to 2011,* U.S. Census Bureau, Survey of Income and Program Participation Panels. Available at *www.census.gov/people/wealth/files/Debt%20Highlights%202011.pdf.* Table A–2 shows that median credit card debt of households under 35 years of age as of 2011 was $3,000, and median other unsecured debt for that same cohort, including student loans and other unsecured debt,

Continued

commenters that state current FHA underwriting standards provide strong support for a threshold greater than 8 percent for the annual earnings rate.

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 ''provide a tolerance over the baseline amounts to identify the lowest-performing programs, as well as to account for former students . . . who may have left the workforce voluntarily or are working part-time.'' 76 FR 34400. As we explained in the NPRM, we continue to believe that the stated objectives of the 2011 Prior Rule—to identify poor performing programs, to build a ''tolerance'' into the thresholds, and to ensure programs are accurately evaluated as to whether they produce graduates with acceptable levels of debt—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, or as failing thresholds, rather than as the passing thresholds. We base this change on our evaluation of data obtained after the 2011 Prior Rule. We conclude that even though programs with D/E rates exceeding the 20 percent and 8 percent thresholds may not all be resulting in egregious levels of debt in relation to earnings, these programs still exhibit poor outcomes and unsustainable debt levels. For the following reasons, our analysis of the programs we evaluated using data reported by institutions after the 2011 Prior Rule went into effect indicates that the stricter thresholds would more effectively identify poorly performing programs.

First, we examined how debt burden that would have passed the 2011 Prior Rule thresholds would affect borrowers with low earnings. Students who completed programs that passed the 2011 Prior Rule thresholds (12 percent/30 percent) but would not pass the 8 percent/20 percent thresholds adopted in these regulations had average earnings of less than $18,000.[113] Graduates of programs that would pass the thresholds of the 2011 Prior Rule (12 percent/30 percent) 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, and we establish lower passing thresholds to help ensure programs are not leading to such results.

Next, we compared repayment outcomes for programs that meet the 8 percent/20 percent thresholds with those that did not, and that comparison also supports lowering the passing thresholds. Specifically, we examined data showing how borrowers default on, and repay, Federal loans through the first three years of repayment. We compared borrower performance among three groups of programs: Programs that pass the 8 percent/20 percent thresholds, programs that do not pass the 8 percent/20 percent thresholds, but would pass the 2011 Prior Rule 12 percent/30 percent thresholds (programs in the zone under these regulations), and programs that fail under the 12 percent/30 percent thresholds of both the 2011 Prior Rule and these regulations. Borrowers in the first group (passing programs under these regulations), from programs that pass the 8 percent/20 percent thresholds, have an average default rate of 19 percent, and an average repayment rate of 45 percent.[114] Borrower performance for the other two groups is different than those in the passing group: Borrowers in the second group (zone programs under these regulations)—those from programs that met the 2011 Prior Rule passing thresholds (12 percent/30 percent) but would not meet the 8 percent/20 percent thresholds—have a default rate of 25 percent and only a 32 percent average repayment rate.[115] Borrowers in the third group (failing programs under these regulations), from programs that fail even the 2011 Prior Rule thresholds (12 percent/30 percent), have rates like those in the zone group: About a 28 percent default rate and an average repayment rate of about 32 percent.[116] Together, these results indicate that zone programs are much more similar to their failing counterparts than their passing counterparts. Accordingly, although zone programs are allowed additional time before ineligibility in comparison to failing programs, programs in both groups are ultimately treated the same if their results do not change because expert recommendations, industry practice, and the Department's analysis all indicate that they are both resulting in similarly poor student outcomes and not resulting in gainful employment. By reducing the passing thresholds for the D/E rates measure to 8 percent and 20 percent, we treat as unacceptable those programs that exceed these thresholds, but allow a limited time to evaluate whether the unacceptable performance persists before revoking eligibility.

With regard to the stated intention to adopt a rate that includes a tolerance to reduce the likelihood that a program will be mischaracterized, we believe that the three-tier pass, zone, fail construction and the corresponding thresholds for these categories make it unnecessary to create buffer by raising the passing thresholds as was done in the 2011 Prior Rule. As discussed in the NPRM, setting the failing thresholds at 12 percent and 30 percent lower the probability to close to zero that passing programs will lose eligibility because they are mischaracterized, due to atypical factors associated with a non-representative cohort of students, as failing. Likewise, creating a buffer between the passing and failing thresholds, where programs in the zone have a longer time to loss of eligibility than those that fail the thresholds, lowers the probability to close to zero that passing programs will lose eligibility because they are mischaracterized as being in the zone as a result of atypical factors.

Further, a four year zone makes it unlikely that fluctuations in labor market conditions could cause a passing program to become ineligible. According to the National Bureau of Economic Research, recessions have, on average, lasted 11.1 months since 1945.[117] An otherwise passing program is unlikely to fall in the zone for four consecutive years due to an economic downturn or fluctuations within the local labor markets.

Under the regulations, programs can satisfy the D/E rates measure in one of two ways. Programs whose graduates have low earnings relative to debt would benefit from the calculation based on total income, and programs whose graduates have higher debt loads that are offset by higher earnings would benefit from the calculation based on discretionary income. Even for programs where the average annual earnings rate for students who complete the program exceeds 8 percent, as long as the average discretionary income rate is below the 20 percent threshold, the program will be deemed passing.

was $13,000. The ''other'' debt accounts for 81 percent of unsecured household debt. Assuming that the lending standards described here allocate 12 percent to non-housing debt, and 81 percent of that allocation is 9.75 percent allocable to non-credit card debt, which includes student loan debt, the 8 percent annual earnings rate appears to fall within this range.

[113] 2012 GE informational D/E rates.

[114] *Id.*

[115] *Id.*

[116] *Id.*

[117] National Bureau of Economic Research (2014), US Business Cycle Expansions and Contractions, available at *www.nber.org/cycles.html.*

We adopted a buffer in the 2011 Prior Rule in part to avoid mischaracterization of a program and in part to account for students who completed the program who are working part-time or who are not employed. As discussed in this section, because the D/E rates measure assesses whether students who complete a GE program will earn enough to manage the debt they incur, that assessment must take into account the outcomes of students who are not working or are not working full time, either by choice or involuntarily, without regard to whether such outcomes are typical. As stated previously, where such outcomes are atypical, several aspects of the regulations, including the pass, zone, and fail thresholds, use of mean and median earnings, use of a multi-year cohort period with a minimum n-size, and allowing several years of non-passing results before a program loses eligibility for title IV, HEA program funds reduce the likelihood to close to zero that a typically passing program will be made ineligible by being mischaracterized as failing or in the zone due to an atypical cohort of students who complete the program such as those identified by the commenter. Where it is typical for students to work time or regularly leave the labor force for long periods, institutions should adjust their costs and other features of their programs to ensure that these students can manage their debt.

Accordingly, for the reasons provided, a buffer is unnecessary. We revise the passing D/E rates in these regulations because we conclude that the 50 percent buffer in the 2011 Prior Rule is unnecessary. We instead establish a zone to identify programs that exceed the 8 percent and 20 percent thresholds, and use the 12 percent and 30 percent measures as the upper limits. This approach accounts for the reasons that a buffer was added in the 2011 Prior Rule, to make accurate and fair assessments of programs, while ensuring that once there is certainty that an accurate and fair assessment is being made, programs with sustained poor outcomes are not allowed to remain eligible and harm students.

We do not agree that alternative thresholds—including annual earnings rates thresholds of 10 percent, 13 percent, and 15 percent, as suggested by commenters—would be more appropriate for determining eligibility under the title IV, HEA programs. We recognize that some research points to these as reasonable thresholds. Likewise, some research may even point to thresholds below 8 percent for the annual earnings rate.[118] However, we believe that 8 percent for education-related debt is well within the range of acceptable debt levels identified by researchers and the standard that is generally most supported.[119] [120] [121] [122] Based on the best available evidence, students whose annual earnings rate exceeds 8 percent are substantially more likely to default on their loans or experience serious financial or emotional harm.

Similarly, we disagree with the commenters that suggested that annual earnings rates be set between 10 and 15 percent because the majority of personal finance experts believe that an acceptable annual debt-to-earnings ratio falls within this range.[123] As stated previously, in the sources cited by the commenters, the personal finance experts often refer to the amount of total debt that individuals can manage, whereas the focus of the D/E rates measure, and the basis for the thresholds, is the acceptable level of debt incurred for enrollment in a GE program. Moreover, such expert advice does not take into consideration that the discretionary income rates allow some programs with annual income rates above 8 percent to pass, if their students earn enough to manage their debt, based on the best available evidence.

We also disagree with the contention made by some commenters that a recent NCES study shows the thresholds to be inappropriately low because a large fraction of graduating undergraduate students have debt-to-earnings ratios above 12 percent, suggesting many non-GE programs in the public and non-profit sector would fail the annual earnings rate if they were subject to the regulations.[124] The NCES methodology for calculating student debt-to-earnings ratios is not comparable to the methodology for calculating D/E rates at the program level under these regulations. Specifically, the NCES methodology for calculating each of loan debt, earnings, and the debt-to-earnings ratios results in higher estimates of debt burden than is observed under the D/E rates methodology. For example: First, the NCES study does not include students who only receive Pell Grants, while these students are included in the D/E rates calculations as having zero debt, which substantially lowers the median loan debt for each program. Also, while the NCES study includes all students paying loans for any reason, the D/E rates exclude students who are still enrolled in school, are serving in the military, have a total and permanent disability, or are deceased, the overall effect of which is to, again, lower the D/E rates for each program. Second, the NCES study measures actual amount borrowed, not the amount borrowed capped at the total of tuition, fees, books, equipment and supplies, as is the case under these regulations. As discussed earlier, in every instance in which the actual amount borrowed exceeds tuition, fees, books and supplies, the D/E rates will be capped at that tuition, fees, books and supplies—not the actual (larger) loan amount. In every one of those instances, the D/E rates calculated under these regulations will necessarily be lower than the amount of loan debt calculated in conventional studies, such as the NCES study (which includes no indication that the term ''debt'' had any special, restricted meaning) and the literature addressing this issue. Third, the NCES study measures earnings only one year after completion, but under the D/E rates measure, earnings are measured about three years after completion. Since earnings tend to increase after completion of postsecondary programs as students gain more experience in the workforce, D/E rates under the regulations will tend to be lower than those reflected in the NCES study. Fourth, the NCES study does not include a discretionary income rate. We believe some programs with relatively high annual earnings rates will pass the discretionary income rate metric because they have graduates who have higher earnings even though they have large amounts of debt. Fifth, under the D/E rates measure, we use the higher of mean and median of earnings and the median of debt, rather than just means. We believe this aspect of the regulations will also lead to lower D/E rates than those reflected in the NCES study because it makes the D/E rates measure less sensitive in extreme cases of high debt and low earnings among students

[118] Baum, S., and Schwartz, S. (2006). How Much Debt Is Too Much? Defining Benchmarks for Managing Student Debt.

[119] Greiner, K. (1996). How Much Student Loan Debt Is Too Much? *Journal of Student Financial Aid, 26*(1), 7–19.

[120] Scherschel, P. (1998). Student Indebtedness: Are Borrowers Pushing the Limits? USA Group Foundation.

[121] Harrast, S.A. (2004). Undergraduate Borrowing: A Study of Debtor Students and their Ability to Retire Undergraduate Loans. *NASFAA Journal of Student Financial Aid, 34*(1), 21–37.

[122] King, T., & Frishberg, I. (2001). *Big Loans, Bigger Problems: A Report on the Sticker Shock of Student Loans.* Washington, DC: The State PIRG's Higher Education Project. Available at *www.pirg.org/highered/highered.asp?id2=7973.*

[123] Kantrowitz, M. (2010). Finaid.com. *What is Gainful Employment? What is Affordable Debt?,* available at *www.finaid.org/educators/20100301gainfulemployment.pdf.*

[124] NCES, ''Degrees of Debt,'' NCES 2014–11.

who complete a program at each institution. These differences in methodology reflect policy goals that have been incorporated into the regulations, including goals relating to the accessibility and affordability of GE programs, as well as Department interests in ensuring the equitable application of these regulations to institutions in different sectors and the coordination of these regulations with other Federal student aid programs. As a result, the results of the NCES study do not provide a useful basis for evaluating the D/E rates thresholds.

Similarly, we disagree with commenters who argued that BPS data showing that, on average, graduating bachelor's degree students have annual earnings rates above 8 percent indicate the thresholds are inappropriate. The data cited by the commenters exclude graduates who graduated with zero debt, which comprise about one-third of students graduating with a bachelor's degree.[125] Also, earnings levels in BPS are reported six years after enrollment, while the D/E rates measure earnings about three years after completion. Another limitation of BPS survey data is that they only measure income from the student's primary job, while the D/E rates include all sources of income reported to the Social Security Administration (SSA).

Changes: None.

Comments: Commenters said the D/E rates measure lacks a rational basis as an accountability metric. They contended that, in adopting the D/E rates measure, the Department places too much weight on the study by Baum and Schwartz and mortgage underwriting standards in identifying thresholds. Commenters said the Department disregards other studies and data sources showing that most programs would not pass the D/E rates measure if it were applied to all postsecondary programs. The commenters asserted the Department should be applying a metric supported by other data studies, relying on data from NPSAS, along with studies conducted by NCES and the American Enterprise Institute, on debt and earnings levels of college graduates.

Commenters also asserted that the data the Department used to analyze the proposed regulations was biased and weak because it only included a small fraction of all GE programs. For this reason, they argued the Department should have considered additional data sources that would have provided more accurate information about the impact of the regulations.

Discussion: The Department considered a number of data and research sources and authorities in formulating the D/E rates measure. In addition to the analysis and recommendation of Baum and Schwartz, we considered research on earnings gains by other scholars, including Cellini and Chaudhary,[126] Kane and Rouse,[127] Avery and Turner,[128] and Deming, Goldin, and Katz.[129] We also took into account lending ratios currently set by the FHA and the CFPB, as they estimate sustainable levels of non-housing debt. As stated previously, we do not believe that the NCES study and the other studies suggested by commenters use a comparable methodology, and further, we do not agree with the conclusions the commenters draw from these studies.

In analyzing the potential impact of the D/E rates measure, we relied primarily on data from NSLDS because it contains a complete record of all students receiving title IV, HEA program funds from each program. Although we also have access to data from sample surveys, such as BPS and NPSAS, we did not rely on such data because we had access to a full data set of students in GE programs. NPSAS data also do not allow for the calculation of D/E rates that are comparable to the D/E rates being evaluated under this regulation. Because NCES and NPSAS data focus on studying all undergraduate students rather than just students who attend GE programs, NCES and NPSAS data provide information on a different population of students than those we expect to be evaluated under the D/E rates measure. Additionally, NCES survey data do not provide earnings information about students three to four years after graduation, which is the timeframe for calculating D/E rates.

We do not agree that our analyses did not sufficiently consider data presented by the American Enterprise Institute.[130] As noted earlier in the summary of comments about the impact of the regulations on for-profit institutions, the American Enterprise Institute data suggest, based on data from the University of Texas, that a large fraction of programs operated by University of Texas would fail the D/E rates measure. These data are not appropriate for analyzing these regulations. First, as with the data used for the NCES report, the University of Texas data do not allow for calculation of D/E rates using a comparable methodology. Second, the American Enterprise Institute only considered data for a small subset of programs and students—that is, those who attended programs in the University of Texas system. We believe considering such a small subset of gainful employment programs has limited analytical value, and, thus, we relied on the data we had available on all gainful employment programs.

We disagree with claims that our analyses are unreliable and biased because we included only a fraction of gainful employment programs. Using our data, we analyzed all programs that we estimate would meet the minimum ''n-size'' requirement to be evaluated under the D/E rates measure—that is, all programs for which 30 students completed the program—for the cohort of students we evaluated.

Changes: None.

Comments: Some commenters recommended raising the D/E rates thresholds to account for longer-term earnings benefits from earned program credentials. Commenters offered research demonstrating that increased benefits from program completion, including non-pecuniary benefits, may not be immediately apparent and may increase over time in a way that the proposed regulations would not take into account.

Discussion: While we agree that gross earnings and earnings gains as a result of obtaining additional credentials will increase for program graduates over the course of their lives, and gains for some occupations may be more delayed than others, we do not believe that this merits increasing the D/E rates thresholds for the purpose of program accountability. As stated previously, these regulations will help ensure program graduates have sustainable debt levels both in the early part of their careers and in later years so loan payments are kept manageable and do

[125] NCES, Degrees of Debt (2014). See Figure 1 for percent of bachelor's degree recipients who did not borrow and Figure 7 for the ratio of monthly loan payments to monthly income. The analysis uses data from U.S. Department of Education, National Center for Education Statistics, 1993/94, 2000/01, and 2008/09 Baccalaureate and Beyond Longitudinal Studies (B&B:93/94, B&B:2000/01, and B&B:08/09).

[126] Cellini, S., and Chaudhary, L. (2012). ''The Labor Market Returns to For-Profit College Education.'' Working paper.

[127] Kane, T., and Rouse, C. E. (1995). Labor Market Returns to Two- and Four-Year College. *The American Economic Review,* 85(3), 600–614.

[128] 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.

[129] Deming, D., Goldin, C., and Katz, L. (2013). *For Profit Colleges. Future of Children,* 23(1), 137–164.

[130] Schneider, M. (2014). American Enterprise Institute. *Are Graduates from public Universities Gainfully Employed? Analyzing Student Loan Debt and Gainful Employment.*

not interfere with individuals' ability to repay other debts or result in general over-indebtedness.

Further, our analysis indicates that the passing thresholds for the D/E rates measure are set at a level that reflects repayment outcomes. The Department's data indicate the average volume-based repayment rate, measured at about the third year of repayment, of programs in the zone is comparable to those above the failing thresholds, while passing programs, on average, have a substantially higher average repayment rate. Average cohort default rates, measured within the first three years of repayment, are similar for zone and failing programs and substantially higher than the average default rate of passing programs.

Changes: None.

Comments: A number of commenters suggested that different thresholds for the D/E rates measure should be applied to institutions or programs that serve students with backgrounds that may increase their risk factors for over-indebtedness. Some commenters suggested that the thresholds be adjusted on a sliding scale based on the number of students served by a program who are eligible for Pell Grants.

One commenter also suggested that different D/E rates thresholds be applied to programs, such as those in the cosmetology sector, that serve mostly women, who the commenter suggested are more likely to choose part-time employment or to not work in order to raise children. This same commenter suggested that programs serving a high proportion of single parents are unfairly punished by the thresholds for the D/E rates measure because single parents would have an incentive to earn limited incomes in order to continue to qualify for various assistance programs.

Discussion: We do not agree that alternative metrics or thresholds should be applied to different types of programs or institutions or to programs serving different types of students, such as minority or low-income students. As described in greater detail in the *Regulatory Impact Analysis,* the Department has examined the effects of student demographic characteristics on results under the annual earnings rate measure and does not find evidence to indicate that the composition of a GE program's students is determinative of outcomes. While the Department recognizes that the background of students has some impact on outcomes and that some groups may face greater obstacles in the labor market than others, we do not agree that the appropriate response to those obstacles is to set alternative standards based on them. As discussed previously, we seek to apply the same set of minimum standards across all GE programs, regardless of their sector, location, or the students they serve. As our analysis shows, the substantial majority of programs will meet these minimum standards, even when comparing programs with higher proportions of students with increased ''risk factors.'' The regulations will help ensure that programs only remain eligible for title IV, HEA program funds if they meet these minimum standards that define maximum levels of indebtedness that are acceptable for any student. We intend for the regulations to allow these successful programs to grow, and for institutions to establish new programs that achieve and build upon these results, so that all students, regardless of background or occupational area, will have options that will lead to positive results.

Changes: None.

Comments: One commenter suggested that the D/E rates thresholds are punitive, as more programs would fail under these regulations than would have failed under the 2011 Prior Rule.

Discussion: While the Department acknowledges that it is possible that more programs would not meet the passing thresholds under these regulations as compared to those in the 2011 Prior Rule, as previously discussed, the Department must ensure an appropriate standard is established to protect students from unmanageable levels of debt. As stated previously, we believe the D/E rates thresholds in these regulations appropriately define the maximum levels of indebtedness that are acceptable for all students.

Changes: None.

Comments: One commenter suggested that the Department include the outcomes of students who do not borrow in a program's D/E rates calculation and suggested that the thresholds be increased to account for this change.

Discussion: The regulations provide for the consideration of the outcomes of students who have completed a program and have only received Pell Grants and, therefore, have no debt for the D/E rates calculation. Further, we assess debt as a median when calculating the D/E rates, so that programs in which a majority of the students who have completed the program but do not have any title IV loans would have D/E rates of zero and would pass the D/E rates measure.

As discussed in ''Section 668.401 Scope and Purpose,'' we are not including individuals who did not receive title IV, HEA program funds in the calculation of the D/E rates measure. We disagree, however, that this warrants adjustments or increases to the D/E rates thresholds. The expert research, industry practices, and internal analysis that we relied on in determining the thresholds apply to all students.

Changes: None.

Zone

Comments: Multiple commenters suggested that the addition of the zone results in unnecessarily complex and burdensome regulations that will confuse borrowers and institutions. One commenter suggested that the zone would create undue burden on State agencies and their monitoring responsibilities. Some commenters expressed concern that the zone yields additional uncertainty for institutions and students regarding the future of a program. Commenters also argued that the zone should be adjusted for student characteristics.

Some commenters suggested removing the zone and returning to the 2011 Prior Rule thresholds of 12 percent for the earnings rate and 30 percent for the discretionary income rate. Other commenters suggested that despite the presence of a zone, the regulations do not allow sufficient time for programs to take corrective actions and improve so that they can move from the zone to passing under the D/E rates measure, making the zone tantamount to failure. One of these commenters, using the 2012 GE informational D/E rates, calculated the aggregate failure rate, counting the zone as a failure, near 31.0 percent—about a five-fold increase in the number of programs ultimately losing eligibility for title IV, HEA program funds, as compared with the 2011 Prior Rule. The commenter also said about 42 percent of programs at for-profit colleges will be failing or in the zone, when weighted by program enrollment, including more than one-third of certificate programs, three-quarters of associate degree programs, one-fifth of bachelor's degree programs, and one-third of professional degree programs. The commenter posited that more than 1.1 million students are enrolled in programs that will lose eligibility for title IV, HEA program funds under the proposed regulations.

Other commenters agreed with the Department's proposal for a zone but argued that the length of time that a program could be in the zone before being determined ineligible is arbitrary. Some of the commenters said that the length of the zone is insufficient to measure programs where there is a longer time after completion before a student is employable, such as with medical programs. Some of the

commenters complained that the four-year zone period, when taken together with the transition period, is too long, and would initially allow failing programs to have operated for eight years without relief to students who are enrolled during that time. Some of these commenters suggested a three-year zone as an alternative.

Some commenters suggested that the Department should provide for a zone only in the first few years after the regulations are implemented and then eliminate the zone. The commenters stated that this approach would help to remove the worst performing programs relatively quickly and allow poor performers that are closer to passing the D/E rates measure time to improve. The commenters said that eliminating the zone after a few years would prevent taxpayers from subsidizing low-performing programs that would otherwise be allowed to continue to enroll unlimited numbers of students while in the zone.

Other commenters suggested that the zone is insufficient because it provides minimal protection while potentially confusing students about the riskiness of a program they may be attending or considering for enrollment. Some of these commenters stated that the zone provides limited transparency, as institutions with potentially failing programs are required to warn students of potential loss of eligibility only in the year before they might be deemed ineligible. Some commenters suggested the Department eliminate the zone to ensure that students are not attending programs in which students who complete the program have a discretionary income rate above 20 percent, an unacceptable outcome.

Other commenters proposed that, while a zone may be necessary, the regulations should include a firm upper threshold by which, should a program's D/E rates exceed the threshold, the program would immediately lose eligibility. Commenters suggested that there are cases in which outcomes for students are so egregious that programs need to lose eligibility immediately to protect students from additional harm.

Discussion: The Department disagrees that the zone should be eliminated or phased out. The zone under the D/E rates measure serves several important purposes.

First, as stated previously, 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 discussed in the NPRM, our analysis shows that the chances that an unrepresentative population of students who completed a program could occur in four out of four consecutive years such 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 is close to zero percent.

As also stated previously, we believe that programs with an annual earnings rate above 8 percent and discretionary income rate above 20 percent are producing poor outcomes for students. A permanent four-year zone holds all of these programs accountable while ensuring that the Department is making an accurate assessment. In comparison, raising the passing thresholds to 12 percent and 30 percent to create a buffer for accuracy would allow many poorly performing programs to evade accountability.

With a shorter zone period, programs would be at risk of mischaracterization. Similarly, it is necessary to have a two out of three year time period to ineligibility for failing programs in order to ensure that an accurate assessment is made. Our analysis indicates the probability of mischaracterizing a program that is typically in the zone as failing in a single year could be as high as 4.1 percent. By allowing programs to remain eligible after a single failing result, we believe we are providing programs near the borderline of the 12 percent threshold a reasonable opportunity to remain eligible until we confirm that our assessment is accurate. Accordingly, we do not agree that programs with an annual earnings rate above 12 percent and discretionary income rate above 30 percent should immediately lose eligibility. We believe that the program disclosures and warnings mitigate the need to establish any threshold where a one-year outcome would immediately trigger a loss of eligibility.

While the zone may lead to at least some additional uncertainty for institutions and students, we believe this concern is outweighed by our interest in ensuring that all poorly performing programs are held accountable. To provide at least some level of protection to students, as discussed in ''§ 668.410 Consequences of the D/E Rates Measure,'' an institution will also be required to issue warnings to current and prospective students for a program in any year in which the program faces potential ineligibility based upon its next set of final D/E rates.

Second, the four-year zone helps to ensure that programs with rates that are usually passing or close to meeting the passing threshold are not deemed failing or made ineligible due to economic fluctuations. As stated previously, recessions have, on average, lasted 11.1 months since 1945.[131] It is implausible that a program would fall in the zone for four consecutive years due to an economic downturn or fluctuations within the local labor markets.

Third, a four-year zone, coupled with the transitional D/E rates calculation, described in more detail in ''Section 668.404 Calculating D/E Rates,'' will provide institutions with more time to show improvement in their programs after the regulations become effective. Programs will have several years after these regulations take effect to improve and achieve passing rates. During the transition period, an alternative D/E rates calculation will be made so that institutions can benefit from any immediate reductions in cost they make. As discussed in ''Section 668.404 Calculating D/E Rates,'' we have changed the transition period by extending the length to ensure that institutions that make sufficient reductions in tuition and fees are able to benefit from such efforts. Because institutions have the ability to affect the debt that their students accumulate by lowering tuition and fees, we believe it is possible for zone and failing programs to improve as a result of the transitional D/E rates calculation. Analysis of the zone programs in the 2012 GE informational D/E rates data set suggests that zone programs would need to reduce their median annual loan payment by roughly 16 percent in order to pass.

While we acknowledge that the zone may add some additional level of complexity to the regulations, we believe it is necessary to ensure that programs that lead to poor outcomes are held accountable. With respect to the commenter who believed the zone would create additional burden for State regulators, we are unable to identify a reason for why this would be the case.

Changes: None.

Time Period to Ineligibility

Comments: Some commenters contended that the Department should revise the regulations to provide for a longer time before which a program that is failing the D/E rates measure would be determined ineligible under the title IV, HEA programs. The commenters

[131] National Bureau of Economic Research (2014). US Business Cycle Expansions and Contractions, available at *www.nber.org/cycles.html.*

stated that the time period should be longer because improvement would be impossible over the two out of three year period proposed. They argued that the Department should adopt the ineligibility time period from the 2011 Prior Rule, where programs would not be determined ineligible unless they failed the metrics in three out of four years.

Other commenters asserted that the two out of three year timeframe is not justified and is designed to deny eligibility to for-profit institutions before they have an opportunity to improve. A few commenters said the proposed period before ineligibility is particularly short for programs with longer lengths, such as advanced degree programs, because these programs would have even less opportunity to improve than would short-term certificate programs based on the fact that students completing these programs would have started attending the program in years even further before the implementation of the regulations.

In contrast, other commenters believed that even two out of three years is too long because allowing these programs to remain eligible for that period of time would harm too many students. They argued that failing programs already produce unacceptably poor outcomes and that allowing them to continue to operate will lead to more students taking out high amounts of debt with little benefit. The commenters proposed that failing programs should become immediately ineligible once the regulations are effective should they fail to pass the D/E rates measure.

Discussion: Institutions should already be striving to improve program outcomes for their students, and the outcomes for graduates every year may be influenced by prior changes an institution made to its program. Based on our analysis, we expect that 74 percent of programs will pass the D/E rates measure, and 91 percent will either pass or be in the zone. Any program with a discretionary income rate above 30 percent and an annual earnings rate above 12 percent is producing poor outcomes for its students and should, in order to minimize the program's negative impact on students, be given as limited a period as is necessary to ensure statistical accuracy of program measurement before it loses its eligibility. Accordingly, we will allow programs to operate until they have failed twice within three years to be certain we are only making ineligible those programs that consistently do not pass the D/E rates measure. Because, as discussed in the NPRM, the probability that a passing program is determined ineligible due to statistical imprecision is nearly non-existent with a two out of three year period, we believe that this is an appropriate length of time to ineligibility for failing programs and that the longer three out of four year period of the 2011 Prior Rule is unnecessary.

Because of the 2011 Prior Rule and informational rates, institutions have had relevant information for a sufficient amount of time to make improvements. Further, the transition period will allow institutions to continue to improve their programs even after the regulations take effect. Even institutions that only begin to make improvements after the regulations take effect, or those that did not have informational rates for programs that were not in existence or are medical or dental programs, will get substantial, if not full, benefit of the transition period. Institutions that make immediate changes that at minimum move a failing program into the zone will then have additional years of the transition period coupled with the zone to continue to improve.

We are revising § 668.403(c)(4) to state more clearly the circumstances in which a program becomes ineligible under the D/E rates measure.

Changes: We have revised the language in § 668.403(c)(4) to clarify that a GE program becomes ineligible if the program either 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 has a combination of zone and failing D/E rates for four consecutive award years for which the program's D/E rates are calculated.

Other Issues Regarding the D/E Rates Measure

Comments: Some commenters suggested that programs should be required to pass both the annual earnings rate and discretionary income rate metrics in order to pass the D/E rates measure. These commenters argued that programs should be expected to generate sufficient income for graduates to cover basic living expenses and pay back their student loans. They expressed concern that many programs pass the annual earnings rate metric even though their students have to spend more than their entire discretionary income on debt service. Similarly, some commenters suggested that the regulations include a minimum earnings level below which a program would automatically fail both the annual earnings rate and discretionary income rate metrics, arguing that there is a baseline income below which any required debt payments would result in unmanageable debt. Multiple commenters made a related suggestion to base the D/E rates measure only on discretionary income, and eliminate the annual earnings rate, so that programs would be deemed failing if their students have earnings below the poverty line.

On the other hand, some commenters argued that the discretionary income rate metric is unnecessary because very few programs would be affected by it.

Discussion: The annual earnings rate and the discretionary income rate, which comprise the D/E rates measure, serve distinct and important purposes in the regulations. The annual earnings rate more accurately assesses programs with graduates that have low earnings but relatively low debt. The discretionary income rate will help capture programs with students that have higher debt but also relatively higher earnings.

The annual earnings rate by itself would fail to properly assess many programs that, according to expert recommendations, meet minimum standards for acceptable debt levels. As a result, the Department disagrees with those commenters who suggested that including the discretionary income rate is of limited value. Without the discretionary income rate, programs where students have high levels of debt, but earnings adequate to manage that debt, would not pass the D/E rates measure. While there may be a more limited universe of programs that would pass the D/E rates measure based on the discretionary income rate threshold, the Department believes it is important to maintain this threshold to protect those programs that may be producing good outcomes for students.

Requiring programs to pass both the annual earnings rate and discretionary income rate, removing the annual earnings rate altogether, or establishing a minimum earnings threshold for the D/E rates measure would all have the same impact—making ineligible programs that, based on expert analysis, leave students with manageable levels of debt. In some cases, programs may leave graduates with low earnings, but these students may also have minimal debt that experts have deemed manageable at those earnings levels. For other programs, students may be faced with high levels of debt, but also be left with significantly higher earnings such that high debt levels are manageable. In both cases, the discretionary income rate and the annual earnings rate, respectively, ensure programs meet a minimum standard while also being allowed to operate when providing

acceptable outcomes for graduates. We provide an analysis in the *Regulatory Impact Analysis* of how many programs passed, failed, or were in the zone under the 2011 GE informational D/E rates.

Changes: None.

Comments: Many commenters contended that the D/E rates measure is flawed because (1) students' earnings are affected by economic conditions beyond the control of the institution, such as fluctuations in the national or regional economy, and (2) earnings vary by regional or geographic location, particularly between rural and urban areas. A few commenters believed it would be difficult for institutions to predict local labor market conditions with enough reliability to set tuition and fees sufficiently low to ensure their programs pass the D/E rates measure.

Discussion: We believe that institutions should be responsive to regional labor market needs and should only offer programs if they reasonably expect students to be able to find stable employment within that occupation. We do not agree that institutions cannot assess their graduates' employment and earnings prospects in order to price their programs appropriately. Indeed, it is an institution's responsibility to conduct the due diligence necessary to evaluate the potential outcomes of students before offering a program. We do not believe that this is an unreasonable expectation because some accreditors and State agencies already require institutions to demonstrate that there is a labor market need for a program before it is approved.

However, we agree that a program should not be determined ineligible under the D/E rates measure due to temporary and unanticipated fluctuations in local labor market conditions. We believe that several components of the accountability framework will help ensure that passing programs do not become ineligible due to such fluctuations.

The regulations provide for a zone that allows programs to remain eligible for up to four years despite not passing the D/E rates measure in any of those years. The zone protects passing programs from losing their eligibility for title IV, HEA program funds where their increase in D/E rates was attributable to temporary fluctuations in local labor market conditions. Most economic downturns are far too short to cause a program that would otherwise be passing to have D/E rates in the zone for four consecutive years due to fluctuations in the local labor market. As stated previously, recessions have, on average, lasted 11.1 months since 1945—far shorter than the four years in which programs are permitted to remain in the zone.[132]

Sensitivity to temporary economic fluctuations outside of an institution's control is also reduced by calculating the D/E rates based on two-year and four-year cohorts of students, rather than a single-year cohort, and calculating a program's annual earnings as means and medians. Calculating D/E rates based on students who completed over multiple years reduces the impact of short term fluctuations in the economy that may affect a particular cohort of graduates but not others. Similarly, means and medians mitigate the effects of economic cycles by measuring central tendency and reducing the influence of students who may have been most impacted by a downturn.

Changes: None.

Comments: Some commenters argued that the D/E rates measure is flawed because for some occupations, such as cosmetology, earnings may be depressed because a significant number of program graduates tend to leave but then return to the workforce, sometimes repeatedly, or to work part-time. According to the commenters, this is particularly the case in occupations in which workers are predominately women, who may leave and return to the workforce for family purposes more frequently than workers in other occupations. The commenters contended that, for students entering such occupations, earnings will be low, so that the regulations will be biased against programs providing training in these occupations.

Discussion: In examining programs generating an unusually large number of graduates without full-time employment, the Department believes it is reasonable to attribute this outcome less to individual student choices than to the performance of the program itself. The D/E rates measure will identify programs where the majority of program graduates are carrying debts that exceed levels recommended by experts. If an institution expects a program to generate large numbers of graduates who are not seeking employment or who are seeking only part-time employment, it should consider reducing debt levels rather than expecting students to bear even higher debt burdens. Regardless of whether a student works full-time or part-time or intermittently, the student is still burdened in the same way by the loans he or she received in order to attend the program.

[132] National Bureau of Economic Research (2014). U.S. Business Cycle Expansions and Contractions, available at *www.nber.org/cycles.html.*

Changes: None.

Comments: Commenters argued that the D/E rates measure is inequitable across programs in different States because, according to the commenters, some States provide more financial aid grants to students and greater financial support to institutions, requiring students to acquire less debt. Commenters said the regulations should take State funding into account because, otherwise, programs in States with less funding for higher education would be adversely affected by the D/E rates measure.

Discussion: While we recognize that there may be differences in support for higher education among States, such that borrowers' debt levels may depend on the State in which they reside, those differences are not relevant to address the question of whether students are overburdened with debt as a result of enrolling in a particular program. Some States' investments in higher education may permit students who benefit from that support to borrow less, in which case programs in that State may have an easier time passing the D/E rates measure, but it would not change the need to ensure borrowers are protected from being burdened in other States that do not provide as much support for higher education. Accordingly, we decline to adjust the D/E rates measure to account for State investment in higher education.

Changes: None.

Comments: Many commenters did not support the Department's proposal in the NPRM that a program must pass both the D/E rates measure and pCDR measure to remain eligible for title IV, HEA program funds. The commenters stated that this approach is inconsistent with the position the Department took under the 2011 Prior Rule, under which a program would remain eligible if it passed either the debt-to-earnings ratios or the second debt measure in that regulation, the loan repayment rate. The commenters contended that the Department did not justify this departure from the 2011 Prior Rule. They suggested that programs should remain eligible for title IV, HEA program funds if they pass either the D/E rates measure or the pCDR measure. They asserted that there is a lack of overlap between programs that fail the D/E rates measure and programs that fail the pCDR measure and this indicates that the two metrics set different and conflicting standards.

We also received a number of comments in support of the Department's proposal to require that programs pass both the D/E rates and pCDR measures. A few of these

commenters were concerned that the pCDR measure does not adequately protect students, citing concerns about the validity of the metric and its susceptibility to manipulation. As a result, they argued that programs should be required to pass both measures if pCDR is included in the final regulations. Some commenters argued that the lack of overlap between the measures supports requiring programs to pass both because it indicates that they assess two distinct and important aspects of program performance. Other commenters were concerned that allowing programs to remain eligible solely on the basis of passing the D/E rates measure would harm students because the D/E rates measure assesses only the outcomes of students who complete a program and does not hold programs accountable for low completion rates.

Similarly, a few commenters suggested the independent operation of pCDR undermines the validity of the D/E rates measure because there are many programs with high D/E rates but low pCDR rates or where fewer than 30 percent of students default, which, in their view, showed that the D/E rates measure does not provide a reasonable basis for eligibility determinations. They contended that because such programs would be ineligible under the proposed regulations, the independent operation of the metrics would result in the application of an inconsistent standard.

Other commenters believed that the pCDR measure by itself is a sufficient measure of whether a program prepares students for gainful employment. Some of these commenters argued that a cohort default rate measured at the program level, as set forth in the NPRM, with a three-year period before ineligibility and with time limits on deferments and forbearances would sufficiently address concerns about the validity of the metric and its susceptibility to manipulation. The commenters contended that the three-year cohort default window is longer than any combination of deferments or forbearances, and that using a three-year default rate measure would ensure borrowers are counted as being in default on a loan if they consistently do not make minimum payments during the three-year window. One commenter said the pCDR measure would protect taxpayers better than the D/E rates measure by ensuring fewer defaults, and, accordingly, this commenter asserted, passing the pCDR measure should be sufficient to remain eligible.

Discussion: As discussed elsewhere in this section, we have not included the pCDR measure as an accountability metric in the final regulations. The Department will assess program performance using only the D/E rates measure. Accordingly, we do not address comments regarding whether the measures should operate independently or whether pCDR is a reasonable measure of continuing eligibility for title IV, HEA program funds.

We do not agree that the D/E rates measure by itself is an improper measure of whether a program prepares students for gainful employment simply because some programs have high D/E rates but a low pCDR. These results are not surprising for two reasons. First, the measures use different approaches to assess the outcomes of overlapping, but disparate groups of students. The D/E rates measure certain outcomes of students who completed a program, while pCDR measures certain outcomes of both students who do, and do not, complete a program. Second, the measures assess related, but different aspects of repayment behavior. While the pCDR measure identifies programs where a large proportion of students have defaulted on their loans, it does not recognize programs where too many borrowers are experiencing extreme difficulty in making payments and reducing loan balances but have not yet defaulted as the D/E rates measure does.

Changes: None.

Comments: Some commenters said the D/E rates measure is unfair in its application to medical programs. One commenter noted that some medical degree programs in the non-profit sector would not be subject to the regulations, while the same medical programs in the for-profit sector would be. Another commenter compared the earnings outcomes of medical programs subject to the regulations to those of some social work degree programs operated by non-profit institutions that are not subject to the regulations. The commenter claimed the regulations are inequitable because D/E rates are generally higher among social workers than those students completing medical certificate programs.

Discussion: As discussed in ''Section 668.401 Scope and Purpose,'' the Department's regulatory authority in this rulemaking is limited to defining statutory requirements under the HEA that apply only to GE programs. The Department does not have the authority in this rulemaking to regulate those higher education institutions or programs that do not base their eligibility on the offering of programs that prepare students for gainful employment, even if such institutions or programs would not pass the D/E rates measure. Further, the regulations establish minimum standards regarding reasonable debt levels in relation to earnings for all GE programs, regardless of how programs that provide training for occupations in different fields, such as social work and medicine, compare to one another.

Changes: None.

Comments: We received a number of comments on how the Department should treat GE programs for which D/E rates are calculated in some years but not others. Some commenters asserted that the Department should not disregard years for which D/E rates are not calculated for a program and instead should treat the program as if it had passed the D/E rates measure for that year. They argued that any other result would be unfair because a program could be determined ineligible as a result of failing the D/E rates measure in two out of three consecutive years for which rates were calculated, even though those assessments had been made very far apart in time from one another.

One commenter suggested using the most recent five award years regardless of whether D/E rates were calculated during any or all of the years. Another commenter supported resetting a program's results under the D/E rates measure after two consecutive years in which D/E rates are not calculated.

Discussion: We do not believe that it is unfair or invalid to use a program's D/E rates for non-consecutive years in determining the program's continuing eligibility for title IV, HEA program funds. The probability of mischaracterizing a program as failing or in the zone due to an unusual cohort of students or other anomalies does not increase if D/E rates are calculated during non-consecutive years.

In determining a program's continuing eligibility, rather than making assumptions about a program's D/E rates in years where less than 30 students complete the program, we believe it is important to use the best available evidence as to whether a program produces positive student outcomes, which is the program's most recent actual results. If the program has in fact improved since a prior result under the D/E rates measure, its improved performance will be apparent once it has enough students who completed the program to be assessed under the D/E rates measure again.

We agree, however, that the longer the hiatus between years for which rates are calculated, the less compelling the inference becomes that a prior result is reflective of current performance. Accordingly, we are revising § 668.403

to provide that, in making an eligibility determination, we will not consider prior D/E rates after four consecutive years in which D/E rates are not calculated. A four-year limitation aligns with the general operation of the D/E rates measure which, under the zone, finds outcomes over a four-year period as relevant. We are also clarifying that, generally, subject to the four-year ''reset,'' if a program's D/E rates are not issued or calculated for an award year, the program receives no result under the D/E rates measure for that award year and the program's status under the D/E rates measure is unchanged from the last year for which D/E rates were calculated. For example, where a program receives its first failing result and the institution is required to give student warnings as a result, the program will still be considered to be a first time failing program and the institution will continue to be required to give student warnings in the next award year even if the program's next D/E rates are not calculated or issued because it did not meet the minimum n-size requirement.

Changes: We have revised § 668.403 to add new paragraph (c)(5), which provides that, if a program's D/E rates are not calculated or issued for an award year, the program receives no result under the D/E rates measure for that award year and the program's status under the D/E rates measure is unchanged from the last year for which D/E rates were calculated, provided that, if the Secretary does not calculate D/E rates for the program for four or more consecutive award years, the Secretary disregards the program's D/E rates for any award year prior to the four-year period in determining whether the program is eligible for title IV, HEA program funds.

We have also revised § 668.404(f) to make a corresponding technical change that the Secretary will not issue draft or final D/E rates for a GE program that does not meet the n-size requirements or for which SSA does not provide earnings data.

Comments: Some commenters recommended that the Department's accountability framework recognize, or exempt from the regulations in whole or in part, programs with exceptional performance under the accountability metrics. A few commenters suggested that institutions or programs with low default rates should be exempt from assessment under the D/E rates measure. Several commenters proposed 15 percent as the appropriate threshold to identify exceptional performance under iCDR, while a few commenters suggested that programs with a pCDR below 30 percent should be exempt from the D/E rates measure. Similarly, a few commenters suggested exemptions for programs or institutions with low rates of borrowing. Specifically, commenters said a program should be deemed to be passing the D/E rates measure if the majority of students who complete the program do not have any debt at the time of graduation.

Other commenters suggested the Department exempt programs with high completion or job placement rates from both the pCDR measure and D/E rates measure. They said high performance on these alternative metrics would demonstrate that programs are successfully preparing students for gainful employment in a recognized occupation. Several commenters contended that a program that provides the highest lifetime net benefits to students who complete the program is an exceptional performer. The commenters proposed that this would be established by subtracting average costs of program attendance from average graduate earnings after factoring in low-income and subgroup characteristics of graduates.

One commenter recommended the Department apply a higher annual earnings rates passing threshold of 13 percent for programs operated by for-profit institutions that adopt programs similar to trial enrollment periods, which would allow students to tryout a program for short period of time with the option of withdrawing from the program without paying any tuition or fees. The commenter also suggested the Department should provide that institutions that implement trial enrollment periods are eligible under the title IV, HEA programs if their programs satisfy the pCDR requirements alone, as the 2011 Prior Rule provided with respect to repayment rate.

Discussion: We appreciate the suggestions for recognizing GE programs that exhibit exceptional performance. There are exemplary programs at institutions across all sectors, including at for-profit institutions and community colleges. We also believe that it is important to identify these programs to recognize their achievements and so that they can be emulated.

However, we disagree with the commenters who suggested that programs or entire institutions should be exempted from some or all parts of the regulations as a reward for exceptional performance. The Department must apply the same requirements to all programs under these regulations and assess all programs equally. Accordingly, we decline to adopt the commenters' suggestions.

We also disagree with the commenter who recommended we apply an annual earnings rate threshold of 13 percent for programs operated by for-profit institutions that offer tuition- and fee-free enrollment trial periods. The calculation of the D/E rates measures does not evaluate students who withdraw before completing a program, and we accordingly, do not believe an enrollment trial period is pertinent to the thresholds for the D/E rate measures. Institutions may, of course, offer enrollment trial periods for their programs and we encourage them to do so.

We will continue to consider ways to recognize exceptional programs. In the meantime, we expect that the disclosure requirements of the regulations will help students identify programs with exceptional performance. We also expect that the disclosures will allow institutions to identify these programs for the purpose of adopting successful practices that lead to exceptional results for students. Finally, we note that programs that are performing at an exceptional level will pass the D/E rates measure and this will be reflected in their disclosures and promotional materials.

Changes: None.

Section 668.404 Calculating D/E Rates Including Students Who Do Not Complete the Program in the D/E Rates Measure

Comments: We received a number of comments responding to the Department's question about whether we should include students who do not complete a GE program in calculating D/E rates.

Several commenters urged the Department to hold institutions accountable for students who do not complete GE programs, arguing that these students often accumulate large amounts of debt, even in short periods of time, that they struggle to repay. Some commenters believed students who do not complete a program should be included in the D/E rates calculations to avoid allowing poor-quality programs to remain eligible for title IV, HEA program funds. Other commenters argued it would be inappropriate to include the debt and earnings of students who do not complete because the earnings of those students and their ability to repay their loans do not reflect the quality of the program they attended. These commenters believed that if students do not complete a GE program, they cannot benefit from the training the program offers. The

commenters reasoned that students who do not complete a program are much less likely to qualify for the types of jobs for which the program provides training, and far more likely to obtain employment in completely different fields. One commenter that favored excluding students who do not complete a program stated that the reasons a student drops out of a program are correlated with socioeconomic factors (e.g., the student is a single parent, is unprepared for college work, or is a first-generation college student) that are also correlated with low earnings. The commenter cited a study conducted by Charles River Associates, commissioned by APSCU, showing that, of the students who do not complete a program, 50 percent drop out within the first six months of enrolling in the program and 75 percent drop out within the first year. The commenter asserted that the debt these students accumulate is relatively low, and, accordingly, churn is not necessarily a negative outcome and institutions should not be discouraged from allowing non-traditional students to explore different options.

Some commenters, however, did not support including students who do not complete a program because programs with high drop-out rates may have low D/E rates as many students would not remain enrolled long enough to accumulate large amounts of debt.

Discussion: As discussed in ''Section 668.403 Gainful Employment Program Framework,'' we agree it is important to hold institutions accountable for the outcomes of students who do not complete a GE program. However, we do not believe that the D/E rates measure is an appropriate metric for this purpose for some of the reasons noted by the commenters. In addition, we agree that including students who do not complete a program in the D/E rates measure could have the perverse effect of improving the D/E rates of some of those programs because students who drop out early may accrue relatively lower amounts of debt than students who complete the program.

Changes: None.

Comments: One commenter recommended that the Department determine which students to include in the calculation of D/E rates based on the amount of debt that a student accumulates, rather than only on whether or not a student completed the program. The commenter agreed with others that an institution should not be held accountable in situations where students incur a minimal amount of debt before dropping out of a GE program, acknowledging that students who do not complete a program will likely have lower earnings than those who complete the program. However, the commenter argued that, at the same time, institutions should be accountable for students who accumulate a significant amount of debt to attend a GE program but ultimately do not complete that program. The commenter believed that, at a certain point, if a student has accrued high levels of debt for attending a program, then the program should have prepared the student for gainful employment in that field to some extent. As an example, the commenter offered that all students who borrow more than $15,000 should be included in the calculation of D/E rates.

Discussion: The Department appreciates but cannot adopt this suggestion. First, we lack sufficient data and evidence to set a threshold for the amount of debt that would be considered sufficiently excessive to warrant including a student in the calculation. Second, as previously discussed, we do not believe it is appropriate to include in the D/E rates measure students who did not complete a GE program. Finally, the notion that including in the D/E rates measure only those students with significant or high levels of debt would not account for the students who incur less debt but are having difficulty repaying their loans because of low earnings.

Changes: None.

Two-Year Cohort Period

Introduction: We received a number of comments on the two-year cohort period that the Department uses in calculating the D/E rates. To aid readers in their review of the comment summaries and our responses, we provide the following context.

Under the regulations, the two-year cohort period covers the two consecutive award years that are the third and fourth award years prior to the award year for which the D/E rates are calculated or, for programs 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 D/E rates are calculated. The Department will calculate the D/E rates for a GE program by determining the annual loan payment for the students who completed the program during the two-year cohort period and obtain from SSA the mean and median aggregate earnings of that group of students for the most recently available calendar year. Because the earnings data we obtain from SSA are for a calendar year, and because students included in the two-year cohort period may complete a program at any time during the cohort period, the length of time that a particular student could potentially be employed before the year for which we obtain earnings data from SSA varies from 18 to 42 months. Counting the year for which we obtain earnings data (earnings year) would extend this period of employment to 30 to 54 months. For example, for D/E rates calculated for the 2015 award year (July 1, 2014 to June 30, 2015), the two-year cohort period is award years 2011 (July 1, 2010 to June 30, 2011) and 2012 (July 1, 2011 to June 30, 2012). We will obtain the annual earnings of students who completed the program during this two-year cohort period from SSA for the 2014 calendar year. So, a student who completes the program at the very beginning of the two-year cohort period, on July 1, 2010, and is employed immediately after completion could be employed for up to 42 months—from July 2010 through December 2013—before the year for which earnings are used to calculate the D/E rates, and up to 54 months if the earnings year itself is included. A student who completes the program at the very end of the two-year cohort period, on June 30, 2012, and is employed immediately after completing the program could be employed for up to 18 months—July 1, 2012 through December 2013—before the year for which earnings data are obtained, and up to 30 months if the earnings year itself is included. Accordingly, although in the NPRM we, and many of the commenters, referred to a three-year employment period, there is a range of possible employment periods for students who complete a program in a two-year cohort period.

Comments: Several commenters requested that the Department clarify which year is the ''most currently available'' year for SSA earnings data in § 668.404(c).

Discussion: The following chart provides the earnings calendar year that corresponds to each award year for which D/E rates will be calculated.

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	Award year for which the D/E Rates are calculated	2014-2015	2015-2016	2016-2017	2017-2018
Medical and Dental Programs	**Two-Year Cohort Period**	2007-2008	2008-2009	2009-2010	2010-2011
		2008-2009	2009-2010	2010-2011	2011-2012
	Four-Year Cohort Period			2007-2008	2008-2009
				2008-2009	2009-2010
				2009-2010	2010-2011
				2010-2011	2011-2012
All Other GE Programs	**Two-Year Cohort Period**	2010-2011	2011-2012	2012-2013	2013-2014
		2011-2012	2012-2013	2013-2014	2014-2015
	Four-Year Cohort Period	2008-2009	2009-2010	2010-2011	2011-2012
		2009-2010	2010-2011	2011-2012	2012-2013
		2010-2011	2011-2012	2012-2013	2013-2014
		2011-2012	2012-2013	2013-2014	2014-2015
	SSA Earnings Year (Jan. 1-Dec. 31)	2014	2015	2016	2017
	Department Receives Mean and Median Earnings from SSA (anticipated dates)	Feb. 2016	Feb. 2017	Feb. 2018	Feb. 2019

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Changes: None.

Comments: Commenters raised various concerns regarding the definition of the ''two-year cohort period.''

Some commenters believed that evaluating earnings after three years is arbitrary, will lead to underestimating how much borrowing is reasonable for education, and will not adequately account for the long-term benefits of completing a program. These commenters asserted that many students

experience substantial increases in earnings later in their careers as they gain experience or various licensures, and that using earnings after only three years would therefore understate the value of the program. Similarly, some commenters asserted that many individuals experience significant income fluctuations in the initial years of their careers.

Some commenters expressed concern that evaluating programs using graduates' earnings three years after graduation will cause institutions to stop offering programs with strong long-term salary growth potential but with low starting salaries. Along these lines, other commenters believed that this approach will lead institutions to offer a disproportionate number of programs in higher-paying fields like business and information technology rather than programs in less lucrative fields like teaching and nursing. To address these concerns, several commenters recommended modifying the proposed regulations to evaluate programs based on graduates' earnings at a later time in their careers. The commenters suggested different points in time that would be appropriate, varying from three to 10 years after completion. Other commenters recommended using a rolling average of graduates' earnings over several years, rather than a snapshot at three years.

Some commenters asserted that, in some cases, the Department will be obtaining earnings data for graduates who were employed for just 18 months. They suggested that students' ultimate earnings, particularly for professional school graduates, would be better reflected by allowing for a longer period after graduation or after the completion of residency training or fellowships for medical or dental school graduates before D/E rates are calculated.

Discussion: We believe that measuring earnings for the employment range covered by the two-year cohort period strikes the appropriate balance between providing ample time for students to become employed and increase earnings past entry level and yet not letting so much time pass that the D/E rates are no longer reflective of the current or recent performance of the program.

The D/E rates measure primarily assesses whether the loan debt incurred by students actually ''pay[s] 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 (1965); S. Rep. No. 89–758, at 7 (1965). As discussed in ''§ 668.403 Gainful Employment Program Framework,'' high D/E rates indicate that the earnings of a program's graduates are insufficient to allow them to manage their debt. The longer the Department waits to assess the ability of a cohort of students to repay their loans, the less relevant that assessment becomes for prospective students, and the more likely it is that new students will attend a program that is later determined to be ineffective at preparing students for gainful employment. Assessing the outcomes of less recent graduates would also make it more difficult for institutions to improve student and program outcomes under the D/E rates measure as it would take many years before subsequently enrolled students who complete the program would be included in the D/E rates calculation.

There is no evidence that relying on earnings during the employment range used in the regulations would actually create the disincentives or result in the harms that commenters suggest. Specifically, many programs training future nurses, teachers, and other modest-earning professions, as characterized by the commenters, would successfully pass the D/E rates measure. For example, of the 497 licensed practical/vocational nurse training programs in the 2012 GE informational D/E rates data set, 493 (99 percent) passed, 4 (1 percent) fell in the zone, and none of the programs failed. In addition, of the 113 programs categorized as education programs by the two-digit CIP code,[133] 109 (96 percent) passed, 3 (3 percent) were in the zone, and only 1 (1 percent) failed. This suggests that programs preparing students for ''less lucrative'' occupations or occupations with delayed economic benefits are not problematic as a class—many programs in these categories succeed in ensuring that the debt of their students is proportional to earnings.

Changes: None.

Comments: Some commenters believed that using both two-year and four-year cohort periods would be confusing, make it difficult to compare programs, and result in misleading comparisons. The commenters reasoned that because economic conditions may vary markedly from year to year, including earnings of graduates who are employed for an additional two years under a four-year cohort period would inflate the earnings used in calculating the D/E rates. Consequently, the commenters suggested that the Department use only a two-year cohort period. In cases where fewer than 30 students complete a program during the two-year cohort period, the commenters suggested that the Department treat the program as passing the D/E rates measure.

Some commenters argued that the Department did not provide any data showing the effect of the four-year cohort period on GE programs or otherwise adequately justify the use of a four-year cohort period. These commenters suggested removing the four-year cohort period provisions until the Department completes a more thorough assessment.

Some commenters believed that the proposed regulations did not adequately specify when and how the Department intends to use the two-year cohort period and four-year cohort period, specifically taking issue with what they believed was the repetitious use of the reference to ''the cohort period.'' The commenters opined that the Department should specify when the two-year cohort period and four-year cohort period are used, in the same manner in which proposed § 668.502(a)(1) of subpart R describes how the Department would determine the cohort for the pCDR measure. Similarly, the commenters were concerned that institutions would be confused by the language used in proposed § 668.404(f)(1) to describe the circumstances under which the Department would not calculate D/E rates if fewer than 30 students completed the program.

Discussion: We agree that using the four-year cohort period may add some complexity, but believe that this concern is outweighed by the benefits of evaluating more programs under the D/E rates measure as some programs that do not meet the minimum n-size of 30 students who complete the program over the two-year cohort period would do so when the four-year cohort period is applied.

With respect to the commenters who argued that the Department did not adequately justify using a four-year cohort period, we disagree. In the NPRM, the Department acknowledged that one of the limitations of using an n-size of 30 as opposed to an n-size of 10 is that use of a larger n-size results in significantly fewer GE programs being evaluated. We estimated that, at an n-size of 30, the programs that will be evaluated under the D/E rates measure account for 60 percent of the enrollment of students receiving title IV, HEA program funds in GE programs.

[133] The two-digit CIP code, 13, is the classification for the education programs including Early Childhood Education and Training, Elementary Education and Teaching, and many other types of programs related to education.

Using the four-year cohort period will help to increase the number of students in programs that are accountable under the D/E rates measure.

In response to comments regarding how the Department intends to use the two- and four-year cohort periods, we note that the preamble discussion in the NPRM under the heading ''Section 668.404 Calculating D/E rates,'' 79 FR 16448–16449, contains a thorough explanation. In short, the calculations for both D/E rates would be based on the debt and earnings outcomes of students who completed a program during a 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 in § 668.404(e), during the cohort period. If 30 or more students completed the program during the third and fourth award years prior to the award year for which D/E rates are calculated, then the cohort period would be that ''two-year'' cohort period. If at least 30 students did not complete the program during the two-year cohort period, then the 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.'' If 30 or more students did not complete the program over the two-year cohort period or the four-year cohort period, then D/E rates would not be calculated for the program.

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 D/E rates are calculated. The four-year cohort period for these programs would be the sixth, seventh, eighth, and ninth award years prior to the award year for which D/E rates are calculated.

Changes: We have revised the definition of ''cohort period'' in § 668.402 to clarify that we use the two-year cohort period when the number of students completing the program is 30 or more. We use the four-year cohort period when the number of students completing the program in the two-year cohort period is less than 30 and when the number of students completing the program in the four-year cohort period is 30 or more.

Comments: Another commenter suggested that the Department replace the term ''cohort period'' with the term ''GE cohort period'' to avoid confusion with the iCDR regulations.

Discussion: We appreciate the commenter's concern but we do not believe that the regulations are confusing with respect to the term ''cohort period.'' While ''cohort'' is a defined term under the iCDR regulations, those regulations do not use the term ''cohort period.'' The term ''cohort period'' appears only in these regulations.

Changes: None.

Comments: One commenter raised concerns about calculating D/E rates for graduates of veterinary or medical school using earnings after only three years following completion of the program. Using the example of a student graduating during the 2011–2012 award year from a veterinary program, whose earnings the commenter believed would be measured based upon SSA earnings data for calendar year 2014, the commenter asserted that the D/E rates would not be an accurate reflection of the student's ability to earn an income or be gainfully employed.

Discussion: We believe that the commenter may have misunderstood the D/E rates calculation for graduates of medical and dental programs whose students are required to complete a period of internship or residency. The regulations do, in fact, consider the resulting delay between when such students complete their respective programs and when they may begin professional practice. 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 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. In the example given by the commenter, SSA earnings for the 2014 calendar year would be used in the D/E rates calculations for the 2014–2015 award year. The two-year cohort period for a medical program would be 2007–2008 and 2008–2009.

Veterinarians, on the other hand, do not have a required internship or residency. They can begin practice immediately following graduation from veterinary school. As with other types of training programs that do not require an internship or residency after program completion, we believe that graduates of veterinary programs will have sufficient time after completion of their program to become employed and increase earnings beyond an entry level in order for the program they attended to be accurately assessed under the D/E rates measure.

Changes: None.

Comments: One commenter said that since there has been no informational rate data provided for medical school programs, institutions with these types of programs would be at a greater disadvantage under accountability metrics that determine a program's continuing eligibility for title IV, HEA program funds based on historical program performance.

Discussion: The Department did not provide informational rate data for medical school programs because we do not have such data. However, an institution can reasonably be expected to know about the borrowing patterns of its students, because the institution's financial aid office typically ''packages'' financial aid, including loans, in arranging financial aid for students. All institutions should also be conducting the necessary local labor market research, including engaging with potential employers, to determine the typical earnings for the occupations for which their programs provide training. Institutions may use this information to estimate their results under the D/E rates measure. Additionally, we believe that the ''zone'' provisions described under ''Section 668.403 Gainful Employment Program Framework,'' together with the transition period in § 668.404(g) described later in this section, will provide programs with an adequate opportunity to make adjustments and improvements to their programs as needed.

Changes: None.

Use of Mean and Median Earnings

Comments: Some commenters supported the proposal in § 668.404(c)(2) to use the higher of the mean or median annual earnings to calculate the D/E rates, arguing that using the higher of the two would better reflect the earnings of students who complete programs and would therefore be fairer to institutions than using only the mean or only the median.

Other commenters recommended using either the mean or the median earnings to calculate D/E rates, rather than the higher of the two. These commenters believed that the proposed approach would make it difficult for consumers, schools, researchers, policymakers, and others to understand the D/E rates. The commenters also said that the informational rates released by the Department in 2010, which were calculated using the higher of the mean or median earnings, were confusing. The commenters expressed further concern that, in addition to causing

confusion, the use of either the mean or the median annual earnings would undermine the public's ability to compare D/E rates across GE programs. These commenters did not believe that the Department presented a reasoned basis for using the higher of the mean or median earnings and argued that the Department's proposed approach would weaken the D/E rates measure.

Some commenters believed that the Department should use the mean in all cases, but they did not elaborate on their reasons for that approach. Other commenters recommended using the median in all cases because they believed that it would be inconsistent to use median loan debt in the numerator of the D/E rates but the mean earnings in the denominator. They also argued that using the median would guarantee that the earnings data reflect the outcomes of at least 50 percent of the students who complete a program and that the earnings of one outlier student would not skew the calculation.

Discussion: We agree with commenters that it is important that consumers and other stakeholders receive clear, useful information about program outcomes. By using the higher of the mean or median earnings, the regulations strike a balance between providing stakeholders information that is easy to use and comprehend and ensuring an accurate assessment of program performance.

Because using the mean or median earnings may affect a particular program, we use the higher of the mean or median earnings to account for the following circumstances:

- In cases where mean earnings are greater than median earnings, we use the mean because the median may be sensitive to zero earnings. For example, if the majority of the students on the list submitted to SSA have zero earnings, the program would fail the D/E rates measure even if most of the remaining students had relatively high earnings. In other words, when the median is less than the mean, there may be a large number of students with zero earnings. So, we use the mean earnings to diminish the sensitivity of the D/E rates to zero earnings and better reflect the central tendency in earnings for programs where many students have extremely low and extremely high earnings.
- In cases where median earnings are greater than mean earnings, we use the median because it is likely that there are more students who completed a program with relatively high earnings than with relatively low earnings. For these cases, we believe that median earnings are a more representative estimate of central tendency than mean earnings. Relatively high median earnings indicate higher employment rates, and by using the median when it is higher than the mean, we reward programs where a high fraction of students who complete a program obtain employment.

Changes: None.

Comments: A few commenters suggested that, if the Department calculates the D/E rates using the higher of mean and median earnings, the Department should publish both the mean and median earnings data for each GE program and indicate which figure was used in the D/E rates calculation. These commenters argued that disclosing this information would mitigate some of the concerns about difficulties comparing and conducting analyses across programs.

Discussion: As an administrative matter, we agree to post the mean and median earnings for all GE programs on the Department's Web site, and we will identify whether the mean or the median earnings were used to calculate the D/E rates for any particular program.

Changes: None.

Comments: A commenter suggested that, in calculating the D/E rates, we use the earnings of the student's household, and not just the earnings of the student.

Discussion: We do not believe it would be appropriate to use household earnings in the calculation of D/E rates. The earnings of other members of the household have no relation to the assessment of the effectiveness of the program in which the student was enrolled.

Changes: None.

Comments: One commenter recommended using the earnings of the top 10 percent of earners in the cohort in the denominator of the D/E rates calculations, rather than the higher of the mean or median earnings of all students who completed the program in the cohort period (other than those excluded under § 668.404(e)). The commenter believed that using the top 10 percent of earners would best represent the earnings potential of students who complete the program and would mitigate the effects of students who opt to leave the workforce, work other than full-time, work in a different field, or are not top performers at work.

Discussion: The regulations seek to measure program-level performance, which we believe is best accomplished by including the outcomes of all students who completed a program. An assessment of just the top 10 percent of earners may provide information on how those particular students are faring, but would say little about actual overall program performance. For example, if the other 90 percent of students were unable to secure employment, then reviewing the outcomes of just the top 10 percent would result in a substantially inaccurate assessment. Further, as discussed in this section and in ''§ 668.403 Gainful Employment Program Framework,'' we believe several aspects of the regulations, including use of mean and median earnings, use of a multi-year cohort period with a minimum n-size, and allowing several years of non-passing results before a program loses eligibility for title IV, HEA program funds reduce the likelihood to close to zero that a typically passing program will be mischaracterized as failing or in the zone due to an atypical cohort of students who complete the program such as those identified by the commenter.

Changes: None.

Comments: One commenter argued that the Department should consider policies that would help students succeed in the recovering labor market, rather than examine average graduate earnings.

Discussion: We agree with the commenter that policies should be designed to help students succeed in the job market. These regulations are intended to accomplish this very objective, at least partly by measuring student earnings outcomes. As a result of the disclosure requirements, which will include earnings information, students and prospective students will have access to more and better information about GE programs so that they can choose a program more likely to lead to successful employment outcomes. The minimum certification requirements will ensure that all GE programs provide students who complete programs with the basic academic qualifications necessary for obtaining employment in their field of training. And, because programs will be held accountable for the outcomes of their students under the D/E rates measure, which requires an assessment of earnings, we expect that, over time, institutions will offer more high-quality programs in fields where students can secure employment at wages that allow them to repay their debt.

Changes: None.

Poverty Guideline

Comments: Some commenters noted that in calculating the discretionary income rate under the proposed regulations, the Department would use the most currently available annual earnings and the most currently available Poverty Guideline, but those

items would correspond to different years. The commenters provided an example where the most currently available annual earnings year might be the 2014 tax year, but the Poverty Guideline used to calculate the rate could be for the 2015 year. According to the commenter, this discrepancy could negatively affect a program's discretionary income rate because the benefit of obtaining the education would not be observed if historical earnings are used. The commenters suggested that, to the extent possible, the Department should use the Poverty Guideline for the same year that the Department obtains SSA earnings data.

Discussion: Under the discretionary income rate, a portion of annual earnings, the amount equal to 150 percent of the Poverty Guideline for a family size of one, is considered to be protected or reserved to enable students to meet basic living costs. Only the remaining amount of annual earnings is considered to be available to make loan payments.

As explained by the Department of Health and Human Services (HHS), the Poverty Guidelines issued at the beginning of a calendar year reflect price changes for the most recently completed calendar year.[134] In the example provided by HHS, the Poverty Guidelines issued in January 2014 take into account the price changes that occurred during the entire 2013 calendar year. Because the HHS process typically results in higher Poverty Guidelines from year to year, we agree with the commenters that the Poverty Guideline used to calculate the discretionary income rate should correspond with the year for which we obtain earnings data from SSA. Otherwise, earnings would be over-protected. For example, as shown in the chart under ''Two-Year Cohort Period,'' we will not obtain earnings data from SSA for the 2014 calendar year until early 2016. So, under the proposed regulations we would have calculated the discretionary income rate using 2014 calendar year earnings and the Poverty Guideline published by HHS in 2016, which would reflect price changes in 2015. It would be more appropriate to use the Poverty Guideline that reflects the price changes during the calendar year for which we obtained earnings, 2014, which would be the Poverty Guideline published in 2015 by HHS.

Changes: We have revised § 668.404(a)(1) to specify that in calculating the discretionary income rate, the Department will use the Poverty Guideline for the calendar year immediately following the calendar year for which the Department obtains earnings data from SSA.

Comments: One commenter stated that according to 2011–2012 NPSAS data, of students attending for-profit institutions, 50 percent have dependent children and 30 percent have at least two dependent children. In view of this information, the commenter concluded that because the discretionary income rate is calculated based on an assumed family size of one, student debt burden is understated.

Similarly, other commenters suggested that the Department use the Poverty Guideline for families. The commenters believed that institutions should be sensitive to students with dependents who are seeking to improve their credentials and earnings by enrolling in GE programs and that using the appropriate Poverty Guideline would provide that incentive to institutions.

Discussion: Although we agree that applying the Poverty Guideline based on actual family size would result in a more precise assessment of loan burden, it would be difficult and highly burdensome, if not impossible, to adopt this approach. There is no apparent way for either institutions or the Department to collect information about the family size of students after they complete a program. At or before the time students enroll in a GE program, they may have reported the number of dependents on the FAFSA, but that information may change between the time students completed the program and when the Department calculates the D/E rates. Even if we were able to collect accurate information, applying a different Poverty Guideline for each student who completed a program, or otherwise accounting for differences in family size, would not only complicate the calculation but result in D/E rates that may not be comparable as there would be different assumptions for discretionary income for different programs. The rate for a program with an average family size of two would be different than the rate for the same program with an average family size of four, creating situations where the Department would not be uniformly assessing the performance of programs and making it difficult for students and prospective students to compare programs.

Changes: None.

Loan Debt

Comments: Several commenters were critical of the Department's proposal to calculate a program's loan debt only as a median. The commenters recommended that we apply the lower of the mean or median loan debt to the D/E rates calculation. Some of these commenters argued that using the median loan debt would create distorted assessments of debt burden for programs that have a small number of students who completed.

A number of commenters stated that using median loan debt would unfairly benefit low-cost programs offered by community colleges because the regulations cap loan debt at the lesser of the student's tuition and fees and books, supplies, and equipment or the amount of debt the students incurred for enrollment in the program. Other commenters suggested that instead of using the lesser of these amounts to calculate the median loan debt, the Department should use the total amount of loan funds that a student used to pay direct charges after taking into account any grants or scholarships the student received to pay for these charges. The commenters argued that if the D/E rates measure is designed to hold institutions accountable for how much they assess students for direct charges, the amount assessed should be the amount of direct costs net of institutional aid. Otherwise, the student's actual costs for direct charges would be overstated.

Some commenters asserted that because independent students may be able to borrow larger amounts than dependent students, a program for which the majority of students who completed the program were independent students would tend to have a higher median loan debt. For this reason, the commenters opined that institutions might be inclined to discourage independent students from enrolling or avoid enrolling other students that are more likely to borrow.

Discussion: We elected to use the median loan debt because a median, as a measure of central tendency of a set of values, is less affected by outliers than a mean. Means are generally more sensitive to extremely high and low values compared to values that do not fall on either extreme, while medians are more sensitive to the values near the 50th percentile of a population being sampled.[135] We also elected to use median loan debt, as opposed to the mean, to reward programs that keep costs sufficiently low such that the

[134] Available at *http://aspe.hhs.gov/poverty/faq.cfm.*

[135] We note that, because the D/E rates are calculated based on a 100 percent sample of the students in the cohort, the median of debt is the value at the 50th percentile (i.e., the midpoint of the distribution of debt) and the values on either side of the median do not influence the value of the median.

majority of students do not have to borrow. For example, if a majority of students in a program only receive Pell Grants and do not borrow, the median loan debt will be zero for that program. Taking into consideration the same logic, we elected to use the mean for earnings because, although the mean is more sensitive to extreme values, it is also less sensitive to zero earnings values. For example, if a majority of students in a program earn zero dollars, the median would be zero, but the mean may still be a substantially greater number than zero if some students have high levels of earnings. We believe it is appropriate to credit such programs for the minority of students who have high earnings and that such a calculation more accurately reflects the central tendency in the earnings of the students who completed the program.

With regard to programs with a small number of students completing the program, as discussed in this section, we mitigate the potential for distorted outcomes by requiring a minimum n-size of 30 students who completed the program in the cohort period for D/E rates to be calculated.

We do not agree with the comment that programs offered by community colleges would benefit more from the capping of a student's loan amount to tuition and fees, and books, equipment, and supplies, because many students at community colleges do not borrow or borrow amounts less than the total amount of tuition and fees and books, equipment, and supplies. For these students, the loan cap would not be applied in determining a program's median loan debt.

With regard to the suggestion that median loan debt should be based on the total amount of loans used to pay direct charges, the commenter is referring to situations where grant or scholarship funds are used ahead of loan funds to pay for direct costs. In these situations the grants and scholarships may be designated to pay direct costs so the amount of loan debt would be no more than the amount of direct costs that were not paid by the grant and scholarships funds. Whereas the suggestion would reduce the amount of the loan debt used to calculate the D/E rates by effectively replacing loan funds with grant or scholarship funds, we believe doing so is contrary to the intent of these regulations to evaluate whether students are able to service the amount of loan debt for the amount up to the direct charges assessed by the institution.

In response to the concerns that an institution might alter its admissions policies based on a student's dependency status or need to borrow, we note that because the loan cap limits the amount of debt on a student-by-student basis to the total amount of direct charges (tuition and fees, and books, supplies, and equipment), the principal factor influencing a program's median loan debt may be tied more to the amount of the direct charges than to the amount that individual students borrow. In addition, as discussed in the *Regulatory Impact Analysis,* our analysis shows that dependency status or socioeconomic background are not determinative of results and so we do not believe the regulations create this incentive.

Changes: None.

Comments: A few commenters asked the Department to clarify how it will calculate a program's median loan debt. They argued that the proposed methodology could be interpreted in two ways, each likely yielding a different result. Under one reading, the Department would determine student by student the lesser of the loan debt and the total program costs assessed to that student, and then calculate the median of all of those amounts. Under another reading, the Department would determine the median amount of all students' loan debts and the median amount of all students' total program costs and use the lesser amount.

Discussion: The commenters' first reading is correct. We will determine individually, for each student who completes a program, the lesser of the total amount of a student's loan debt and the total costs assessed that student for tuition and fees and books, supplies, and equipment, and use whichever of these amounts is lower to calculate the median loan debt for the program.

Changes: We have revised § 668.404(b)(1) to more clearly describe how the Department will calculate the median loan debt for a program. We have also revised § 668.404(d)(2) to clarify that for the purpose of determining the lesser amount of loan debt or the costs of tuition and fees and books, supplies, and equipment, we attribute these costs to a GE program in the same way we attribute the loan debt a student incurs for attendance in other GE programs.

Comments: One commenter stated that loan debt incurred by a medical school graduate increases because interest accrues while the student is in a residency period and that this additional debt would affect D/E rates.

Discussion: In determining a student's loan debt, the Department uses the total amount of loans the student borrowed for enrollment in a GE program, net of any cancellations or adjustments made on those loans. Any interest that accrues on those loans or that is subsequently capitalized is not considered loan debt for the purpose of calculating a program's D/E rates.

Changes: We have revised § 668.404(d)(1)(i) to clarify that the total amount borrowed by a student for enrollment in a GE program is the total amount disbursed less any cancellations or adjustments.

Comments: Some commenters recommended that the Department clarify the timing and conditions under which the Department would remove loan debts for students for whom SSA does not have earnings information.

Discussion: As explained more fully in ''§ 668.405 Issuing and Challenging D/E Rates,'' at the time that SSA provides the Department with the mean and median earnings of the students who completed a program, SSA will also provide a count of the number of students for whom SSA could not find a match in its records, or who died. Before calculating the program's median loan debt, we will remove the number of highest loan debts equal to the number of students SSA did not match. Since we do not have information on each individual student who was not matched with SSA data, we remove the highest loan debts to provide a conservative estimate of median loan debt that ensures we do not overestimate the amount of debt borrowed by students who were successfully matched with SSA data.

Changes: None.

Comments: Several commenters stated that the proposed regulations do not clearly show how debt is attributed in situations where students are enrolled in multiple GE programs simultaneously at the same or different credential levels.

Discussion: Under § 668.411(a), an institution is required to report a student's enrollment in each GE program even when the student was enrolled in more than one program, either at different times, at the same time, or for overlapping periods. The institution reports information about each enrollment (dates, tuition and fees, books, supplies, and equipment, amounts of private student loans and institutional financing, etc.) separately for each program. The Department uses the reported enrollment dates to attribute a student's loan amounts to the relevant GE program. In instances where a student was enrolled in more than one GE program during a loan period, we attribute a portion of the loan to each program in proportion to the number of days the student was enrolled in each program.

In attributing loans, we exclude those loans, or portions of loans, that were made for a student's enrollment in a non-GE program (e.g., a degree program at a public or not-for-profit institution). In instances where a loan was made for a period that included enrollment in both a GE program and in a non-GE program, the loan will be attributed to the GE program under the assumption that the student would have taken out the loan if the student was enrolled only in the GE program.

Changes: None.

Comments: Some commenters stated that many students enter for-profit schools after accumulating loan debt from traditional colleges, and that the added debt may severely affect the students' ability to repay their loans.

Discussion: We agree that increasing amounts of debt, regardless of where that debt was incurred, will affect a student's ability to repay his or her loans. However, the D/E rates are calculated based only on the amount a student borrowed for enrollment in GE programs at the institution, and are not based on any debt accumulated at other institutions the student previously attended, except where the student incurred debt to attend a program offered by a commonly owned or controlled institution, and where disregarding the common ownership or control would allow manipulation of D/E rates, as provided under § 668.404(d)(3).

Changes: None.

Comments: One commenter suggested that the Department revise § 668.404(d)(1)(iii) to clarify that the amount of any obligation that a student owes the institution is the amount outstanding at the time the student completes the program. The commenter provided the following language: ''The amount outstanding, as of the date the student completes the program, on any credit extended by or on behalf of the institution for enrollment in the GE program that the student is obligated to repay after program completion, even if that obligation is excluded from the definition of a 'private education loan,' in 34 CFR § 601.2.''

Other commenters opined that total loan debt should not include any funds a student owes to an institution unless those funds are owed pursuant to an executed promissory note.

Discussion: We believe that any amount owed to the institution resulting from the student's attendance in the GE program should be included, regardless of whether it is evidenced by a promissory note or other agreement because the amount owed is the same as any other debt the student is responsible to repay. For this reason, we clarify that, in addition to an obligation stemming from extending credit, an obligation includes any debts or unpaid charges owed to the institution. In addition, we adopt the commenter's suggestion to specify that the amount included in determining the student's loan debt is the amount of credit extended (not from private education loans) by or on behalf of the institution, including any unpaid charges, that are outstanding at the time the student completed the program.

Changes: We have revised the regulations to clarify, in § 668.404(d)(1)(iii), that loan debt includes any credit, including for unpaid charges, extended (other than private education loans) by or on behalf of an institution, that is owed to the institution for any GE program attended at the institution, and that the amount of this institutional credit includes only those amounts that are outstanding at the time the student completed the program.

Comments: One commenter asked the Department to clarify if institutional debt would include amounts owed to the institution resulting from the institution's return of unearned title IV aid under the return to title IV aid regulations.

Discussion: The situation described by the commenter results where a student enrolls at an institution, the student withdraws at a point where the institution returns the unearned portion of the student's title IV, HEA program funds and the student is required to pay the institution at least a portion of the charges that would have been paid by those unearned funds, and the student subsequently completes a GE program at the same institution before paying those charges from the prior enrollment. We confirm that the institutional debt for the program the student completes includes the student debt from the prior enrollment at the institution. We do not believe this series of events will happen often, and it is unlikely that it would significantly change the median loan debt calculated for a program.

Changes: None.

Comments: Some commenters opined that the regulations do not provide for an accurate assessment of debt burden because, in addition to title IV loans and private loans, students use other financing options, such as credit cards and home equity loans, to cover educational expenses. They argued that the Department should not ignore these other forms of credit because doing so would understate the debt burden of students.

Discussion: While we agree that there may be instances where counting debt incurred through various financing options may provide a better assessment of total debt, the information needed to include that debt in calculating the D/E rates is generally not available and may not be useable if the debt is not tied directly to a student. For example, an institution would not typically know or inquire whether a student or the student's family obtained an equity loan or used a portion of that loan to pay for educational expenses. For a credit card, even when an institution knows that it was used to pay for educational expenses, the institution does not typically know or inquire whether the amount charged on the credit card was paid in full shortly thereafter or created a longer-term obligation similar to a student loan.

Changes: None.

Comments: Some commenters argued that the Department did not clarify how an institution might ''reasonably be aware of'' a student who has a private student loan and that, as a result, some borrowing will go unreported, perhaps intentionally. One of the commenters noted that Federal law does not currently require an institution to certify that a borrower has demonstrated need to receive a private student loan. As noted in a 2012 study conducted by the CFPB and the Department, according to the commenter, private student lenders have directly originated loans to students, sometimes without the school's knowledge. The commenters encouraged the Department to clarify the phrase ''reasonably aware'' to reduce the likelihood that institutions will engage in tactics to arrange credit from private lenders for students in an attempt to circumvent the requirements of the regulations.

Similarly, other commenters argued that the ''reasonably aware'' provision gives too much discretion to institutions to report private loans. The commenters stated that private loans are an expensive form of financing that is used by students attending for-profit institutions at twice the rate as students attending non-profit institutions and that, in some cases, for-profit institutions use private loans to evade the 90/10 provisions in section 487(a)(24) of the HEA. For these reasons, the commenters suggested that the Department require institutions to affirmatively assess whether their students have private loans.

Discussion: The HEOA requires private education lenders to obtain a private loan certification form from every borrower of such a loan before the lender may disburse the private education loan. Under 34 CFR 601.11(d), an institution is required to

provide the self-certification form and the information needed to complete the form upon an enrolled or admitted student applicant's request. An institution must provide the private loan self-certification form to the borrower even if the institution already certifies the loan directly to the private education lender as part of an existing process. An institution must also provide the self-certification form to a private education loan borrower if the institution itself is the creditor. Once the private loan self-certification form and the information needed to complete the form are disseminated by the institution, there is no requirement that the institution track the status of the borrower's private education loan.

The Federal Reserve Board, in 12 CFR 226.48, built some flexibility into the process of obtaining the self-certification form for a private education lender. The private education lender may receive the form directly from the consumer, the private education lender may receive the form through the institution of higher education, or the lender may provide the form, and the information the consumer will require to complete the form, directly to the borrower. However, in all cases the information needed to complete the form, whether obtained by the borrower or by the private education lender, must come directly from the institution.

Thus, even though an institution is not required to track the status of its student borrowers' private education loans, the institution will know about all the private education loans a student borrower receives, with the exception of direct-to-consumer private education loans, because as previously, the institution's financial aid office ''packages'' most private education loans in arranging financial aid for students. We consider the institution to be reasonably aware at the very least of private education loans that its own offices have arranged or helped facilitate, including by providing the certification form. The institution must report these loans. Direct-to-consumer private education loans are disbursed directly to the borrower, not to the school. An institution is not involved in a certification process for this type of loan. Nothing prevents an institution from asking students whether they obtained direct-to-consumer private loans, and we encourage institutions to do so. However, we are not persuaded that requiring institutions to affirmatively assess whether students obtain direct-to-consumer private education loans through additional inquiry, as suggested by some commenters, will be helpful or result in reporting of additional loans that would materially impact the median loan debt of a program.

Changes: None.

Comments: A few commenters argued that loan debt should include all loans held by each student, not just loans attributed to the relevant program. The commenters suggested that by including debt previously received for attendance at prior institutions, the metric would better take into account previous educational and job experience, factors not currently reflected in the D/E rates measure.

Discussion: The Department is adopting the D/E rates measure as an accountability metric because we believe that comparing debt incurred for completing a GE program with earnings achieved after that training provides the most appropriate indication of whether students can manage the debt they incurred. We attribute loan debt to the highest credentialed program completed by a student for two reasons: Earnings most likely stem from the highest credentialed program and some or all of the coursework from a lower credentialed program may apply to the higher credential program. For these reasons, in cases where a student completes a lower credential program but previously enrolled in a higher credentialed program, we do not believe it is appropriate to include the loan debt from the higher credentialed program.

Changes: None.

Comments: One commenter noted that the reference in § 668.404(b)(1)(ii) to the reporting requirements relating to tuition and fees and books, equipment, and supplies is incorrect.

Discussion: The commenter is correct.

Changes: We have relocated and corrected the reference in § 668.404(b)(2) to the tuition and fees and books, equipment, and supplies reported under § 668.411(a)(2)(iv) and (v).

Tuition and Fees

Comments: A number of commenters agreed with the Department's proposal to cap the loan debt for a student at the amount assessed for tuition and fees but disagreed with the proposal in § 668.404(b)(1)(i) and (ii) to include books, supplies, and equipment as part of the cap. Some of the commenters stated that institutions include the costs of books, ''kits,'' and supplies as part of the tuition for many programs as a way to limit student out-of-pocket costs and, accordingly, did not believe they should be held accountable for those costs. A few of these commenters suggested that the Department exclude from the cap the costs of books, supplies, and equipment if an institution can show that it reduced the price of these items to the student through direct purchasing. Other commenters believed that since students may purchase the supplies they want, but not necessarily need, and because the prices for books, supplies, and equipment may vary greatly, the loan cap should include only tuition and fees.

Some commenters supported the proposed tuition and fees and books, equipment, and supplies cap, opining that because the title IV, HEA programs permit students to borrow in excess of direct educational costs, calculating the loan debt without a cap would unfairly hold institutions accountable for portions of debt unrelated to the direct cost of the borrower's program. The commenters reasoned that inasmuch as institutions are not permitted to limit borrowing (other than on a case-by-case basis), it would be unfair to allow decisions by students to borrow above the cost of the program to affect a program's eligibility. Some of these commenters requested that the Department give institutions more tools or the authority to reduce over-borrowing if they are to be held accountable for debt above tuition and fees.

On the other hand, some commenters objected to the cap. They asserted that limiting loan debt would invalidate the D/E rates as an accountability metric because a portion of a student's debt (debt incurred for living expenses and other indirect costs) would not be considered.

A few commenters disagreed with the Department's position that tuition, fees, books, supplies, and equipment are the only costs over which an institution exercises direct control. These commenters argued that an institution has control over the cost of attendance elements that enable students to borrow for indirect expenses such as room and board.

Other commenters opined that costs for books, supplies, and equipment are largely determined by students and that, even for students in the same program, costs may vary depending on whether students purchase new or used materials, rent materials, or borrow the materials. Given this variability, the commenters noted that it could be difficult for an institution to establish an appropriate amount for these items in a student's cost of attendance budget, and were concerned that less reputable institutions may misreport data for books, supplies, and equipment to lower the amount at which the Department would cap loan debt for a program. The commenters concluded that including

books, supplies, and equipment in the loan cap may hurt institutions that truthfully report information to the Department.

Discussion: We believe that an institution has control over the costs of books, supplies, and equipment, either by including those costs in the amount it charges for tuition and fees, as noted by some of the commenters, or through a process where a student purchases those items from the institution. To account for instances where the student purchases, rents, or otherwise obtains books, supplies, and equipment from an entity other than the institution, § 668.411(a)(2)(v) requires the institution to report the total amount of the allowances for those items that were used in the student's title IV Cost of Attendance (COA). As explained more fully in volume 3, chapter 2 of the FSA Handbook, section 472 of the HEA specifies the items or types of costs, like the costs for books and supplies, that are included in the COA, but the institution is responsible for determining the appropriate and reasonable amounts of those items.[136] The COA is a longstanding statutory provision with which institutions have had to comply, so we do not agree that it would be difficult for institutions to establish reasonable allowances for COA items. In any event, to comply with the reporting requirements, an institution simply reports the total amount of the COA allowances for books, supplies, and equipment or the amount of charges assessed the student for obtaining or purchasing these items from the institution, whichever amount is higher. Under this approach, it does not matter where a student purchased books or supplies or how much they paid, or whether he or she needed or wanted the supplies. The institution controls the COA allowances and controls the cost of these items.

Although we encourage institutions to reduce the costs of books and supplies, those actions have no bearing on the central premise of capping loan debt—that an institution is accountable under these regulations for the amount of debt a student incurs to pay for direct costs that the institution controls. In this regard, we limit the direct costs for items under the cap to those that are the most ubiquitous—books, supplies, and equipment. As noted in the comments, room and board is a COA item that could be included in the cap, but many GE program students enroll in distance education or online programs or attend programs at institutions that do not have or offer campus housing or meal plans.

Although we agree that it would be appropriate for research and consumer purposes to recognize all educational loan debt incurred by students attending GE programs, we disagree with the comment that limiting loan debt under the cap would invalidate the D/E rates measure. In the context of an eligibility requirement related to program performance, we believe it is appropriate to hold an institution accountable for only those program charges over which it has control, and could exercise that control to comply with the thresholds under the D/E rates measure. However, students and prospective students should have a complete picture of program outcomes, including information about the total amount of loan debt incurred by a typical student who completed the program. Accordingly, the median loan debt for a program that is disclosed under § 668.412 is not limited to the amount assessed for tuition and fees and books, equipment, and supplies.

With respect to the comment that the Department should give institutions more flexibility to control student borrowing, we do not have the authority to change rules regarding loan limits because these provisions are statutory. *See* section 454(a)(1)(C) of the HEA, 20 U.S.C. 1087d(a)(1)(C).

Finally, we do not believe that including books, supplies, and equipment in the loan cap would encourage an institution to misreport the COA allowances for these items to the Department. We note that institutions that submit reports to the Department are subject to penalty under Federal criminal law for making a false statement in such a report. *See, e.g.,* 18 U.S.C. 1001, 20 U.S.C. 1097(a).

Changes: None.

Comments: Some commenters were concerned that capping loan debt may inappropriately benefit GE programs with low reported direct costs. For example, a GE program may appear to have better D/E rates if an institution keeps tuition and fees low by shifting costs, and loan debt related to those costs, to housing or indirect costs that are not included in calculating the D/E rates. Consequently, the commenters believed it was unfair for some GE programs to benefit from a cap because these programs could have the same total loan debt as GE programs where the cap would not apply. The commenters concluded that lower direct costs are not necessarily indicative of lower debt and may actually serve to hide the true balance of the loan debt, an outcome that would lead the public, students, and prospective students to draw erroneous conclusions about a program's D/E rates.

Discussion: We do not agree there is a material risk that an institution would shift costs in the manner described by the commenters to take advantage of the cap, but we will know about any changes in program costs through the reporting under these regulations and may require an institution to explain and document those changes.

Changes: None.

Comments: A commenter stated that foreign veterinary schools do not control the amount of tuition assessed for the clinical year of instruction. The commenter noted that under 34 CFR 600.56(b)(2)(i), students of foreign veterinary schools that are neither public or non-profit must complete their clinical training at veterinary schools in the United States. For the fourth or clinical year of study, the U.S. veterinary school, which is not subject to the GE regulations, charges the foreign school an amount for tuition that is typically the out-of-state tuition rate. In the case cited by the commenter, approximately 77 percent of the tuition amount the foreign veterinary school assesses its students is paid to the U.S. school. Because foreign veterinary schools have no control over the tuition charged by U.S. schools that its students are required to attend, the commenter suggests that the Department allow foreign veterinary schools to exclude from total direct costs the portion of tuition that is charged by U.S. schools.

Discussion: We do not agree that it would be appropriate to ignore loan debt that students incur for completing coursework provided by other institutions. For foreign veterinary schools and home institutions that enter into written arrangements under 34 CFR 668.5 to provide education and training, the veterinary school, or the home institution considers that coursework in determining whether to confer degrees or credentials to those students in the same way as if they provided the coursework themselves and the students are responsible for the debt accumulated for that coursework. Furthermore, in arranging for other institutions to provide coursework, the veterinary school or the home institution may be able to negotiate the cost of that coursework, but at the very least accepts those costs. For these reasons, we view the veterinary school or home institution as the party responsible for the loan debt students incur for completing coursework at other institutions.

Changes: None.

[136] Available at *www.ifap.ed.gov/fsahandbook/attachments/1415FSAHbkVol3Ch2.pdf.*

Amortization

Comments: Several commenters supported the Department's proposal to amortize the median loan debt of students completing a GE program over 10, 15, or 20 years based on the credential level of the program, as opposed to a fixed amortization period of 10 years for all programs. These commenters believed that this amortization schedule more fairly accounts for longer and higher credentialed programs where students take out greater amounts of debt, better reflects actual student repayment patterns, and appropriately mirrors available loan repayment plans.

Some commenters supported the proposed amortization schedule based on credential level but suggested longer amortization periods than those proposed. For instance, some commenters recommended increasing the minimum amortization period from 10 years to 15 or 20 years.

One commenter suggested that we extend the amortization period from 10 years to 20 years because the commenter believed a 20-year amortization schedule would more accurately reflect the actual time until full repayment for most borrowers. The commenter cited to the Department's analysis in the NPRM that showed that 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; and within 20 years of entering repayment, between 81 and 83 percent of students, depending on the cohort year, fully repaid their loans. The commenter also contended that far more bachelor's degree programs would pass the D/E rates measure if we adopted a 20-year amortization period.

Other commenters agreed with using 10 years for certificate or diploma programs, but argued for extending the amortization period to 25 years for graduate, doctoral, and first professional degree programs. They asserted that students in graduate-level programs would likely have higher levels of debt that might take longer to repay. Some commenters were particularly concerned that some programs in high-debt, high-earnings fields would not be able to pass the D/E rates measure absent a longer amortization period. One commenter expressed concern that, even with a 20-year amortization period, medical programs, including those preparing doctors for military service and service in areas that have critical shortages of primary care physicians, would fail to pass the annual earnings rate despite successfully preparing their graduates for medical practice.

Other commenters advocated using a single 10-year amortization period regardless of the credential level. These commenters argued that a 10-year amortization period would best reflect borrower behavior, observing that most borrowers repay their loans under a standard 10-year repayment plan. The commenters referred to the Department's analysis in the NPRM, which they believed showed that 54 percent of borrowers who entered repayment between 1993 and 2002 had repaid their loans within 10 years, and about 65 percent had repaid their loans within 12 years, despite economic downturns during that period. In view of this analysis, the commenters believed that the proposed 15- and 20-year amortization periods are too long and would allow excessive interest charges. These commenters also argued that longer repayment plans, like the income-based repayment plan, are intended to help struggling borrowers with unmanageable debts and should not become the expectation or standard for students repaying their loans. They asserted that the income-driven repayment plans result in considerably extending the repayment period, add interest cost to the borrower, and allow cancellation of amounts not paid at potential cost to taxpayers, the Government, and the borrower.

Discussion: Under these regulations, the Department determines the annual loan payment for a program, in part, by applying one of three different amortization periods based on the credential level of the program. As noted by some of the commenters, the amortization periods account for the typical outcome that borrowers who enroll in higher-credentialed programs (e.g., bachelor's and graduate degree programs) are likely to have more loan debt than borrowers who enroll in lower-credentialed programs and, as a result, are more likely to take longer to repay their loans.

Based on our analysis of data on the repayment behavior of borrowers across all sectors who entered repayment between 1980 and 2011 that was provided in the NPRM, we continue to believe that 10 years for diploma, certificate, and associate degree programs, 15 years for bachelor's and master's degree programs, and 20 years for doctoral and first professional degree programs are appropriate amortization periods. We restate the relevant portions of our analysis here.

Of borrowers across all sectors who entered repayment between 1993 and 2002, we found that within 10 years of entering repayment, the majority of undergraduate borrowers, about 58 percent of borrowers from two-year institutions and 54 percent of undergraduate borrowers from four-year institutions, had fully repaid their loans. In comparison, less than a majority of graduate student borrowers had fully repaid their loans within 10 years. Within 15 years of entering repayment, a majority of all borrowers regardless of credential level had fully repaid their loans: About 74 percent of borrowers from two-year institutions, 76 percent of undergraduate borrowers from four-year institutions, and 72 percent of graduate student borrowers.[137]

For more recent cohorts, the majority of borrowers from two-year institutions continue to fully repay their loans within 10 years. For example, of undergraduate borrowers from two-year institutions who entered repayment in 2002, 55 percent had fully repaid their loans by 2012. We believe this confirms that a 10-year amortization period is appropriate for diploma, certificate, and associate degree programs.

In contrast, recent cohorts of undergraduate borrowers from four-year institutions and graduate student borrowers are repaying their loans at slower rates than similar cohorts. Of borrowers who entered repayment in 2002, only 44 percent of undergraduate borrowers from four-year institutions and only 31 percent of graduate student borrowers had fully repaid their loans within 10 years. Even at this slower rate of repayment, given that 44 percent of undergraduate borrowers at four-year institutions fully repaid within 10 years, we believe it is reasonable to assume that the majority, or more than 50 percent, of borrowers from this cohort will reach full repayment by the 15-year mark. Accordingly, we believe that a 15-year amortization period is appropriate for bachelor's degree programs and additionally master's degree programs where students are likely to have less debt than longer graduate programs. Given the significantly slower repayment behavior of recent graduate student borrowers and the number of increased extended repayment periods available to borrowers, however, we do not expect the majority of these borrowers to fully repay their loans within 15 years as graduate student

[137] Department of Education analysis of NSLDS data.

borrowers have in the past. But even at this slower rate of repayment, we believe it is likely that the majority of graduate student borrowers from this cohort will complete their repayment within 20 years. As a result, we see no reason to apply an amortization period longer than 20 years to doctoral and first professional degree programs.

We agree with the commenters who argued that the Department has made income-driven repayment plans available to borrowers who have a partial financial hardship only to assist them in managing their debt—and that programs should ideally lead to outcomes for students that enable them to manage their debt over the shortest period possible. As we noted in the preamble to the 2011 Prior Rule, an educational program generating large numbers of borrowers in financial distress raises troubling questions about the affordability of those debts. Moreover, the income-driven repayment plans offered by the Department do not provide for a set repayment schedule, as payment amounts are determined as a percentage of income. Accordingly, we have not relied on these plans for determining the amortization schedule used in calculating a program's annual loan payment for the purpose of the D/E rates measure.

Changes: None.

Comments: One commenter suggested that instead of amortizing the median loan debt over specified timeframes, we should use the average of the actual annual loan amounts of the cohort that is evaluated. The commenter argued that by providing income-driven repayment plans, the Department acknowledges that recent graduates may not be paid well but need a way to repay their loans. As these graduates gain work experience, their earnings will increase. The commenter suggested that using the actual average of the cohort would allow for programs that provide training for occupations that require experience before earnings growth and motivate institutions to work with graduates who would be better off in an income-driven repayment plan than defaulting on their loans.

Discussion: We cannot adopt this suggestion because we do not have all the data needed to determine the actual annual loan amounts, particularly for students who received FFEL and Perkins Loans. But even if we had the data, adopting this suggestion would have the perverse effect of overstating the performance of a program where, absent adequate employment, many students who completed the program have to rely on the debt relief provided by income-driven repayment plans—an outcome that belies the purpose of these regulations.

Changes: None.

Interest Rate

Comments: Several commenters opposed the Department's proposal to apply an interest rate that is the average of the annual interest rate on Federal Direct Unsubsidized Loans over the six-year period prior to the end of the cohort period. Some commenters asserted that a six-year average rate would inappropriately place greater emphasis on the predictability of the rate than on capturing the actual rates on borrowers' loans. They argued that, particularly in the case of shorter programs, the six-year average interest rate might bear little resemblance to the actual interest rate that students received on their loans. One commenter stated that the average rate could obscure periods of high interest rates during which borrowers would still have to make loan payments. Referring to qualified mortgage rules that instruct lenders to assess an individual's ability to repay using the highest interest rate a loan could reach in a five-year period, the commenter recommended that we likewise calculate the annual loan payment based on the highest interest rate during the six-year period.

Many commenters urged the Department to use an interest rate closer to the actual interest rate on borrowers' loans. Specifically, commenters recommended calculating each student's weighted average interest rate at the time of disbursement so that the interest rate applied for each program would be a weighted average of each student's actual interest rate. However, acknowledging the potential burden and complexity of this approach, some commenters alternatively suggested varying the time period for determining the average interest rate by the length of the program. Although they suggested different means of implementing this approach (e.g., averaging the interest rate for the years in which the students in the cohort period received loans, or using the interest rates associated with the median length of time it took for students to complete the program), the commenters argued that determining an average interest rate based on the length of a program would provide more accurate calculations than using a six-year average interest rate for all GE programs. In particular, they believed that this approach would avoid situations in which a six-year average interest rate would be applied to a one-year certificate program, potentially applying an interest rate that would not reflect students' repayment plans.

Some commenters suggested modifying proposed § 668.404(b)(2)(ii) to add a separate interest rate for private education loans. These commenters argued that applying the average interest rate on Federal Direct Unsubsidized Loans to an amount that includes private loans would likely understate the amount of debt that a student incurred. They suggested that the Department could determine an appropriate interest rate to apply to private education loans by obtaining documentation of the actual interest rate for institutional loans and, for private education loans, surveying private student loan rates and using a rate based on that survey.

One commenter supported the Department's proposal to use the average interest rate on Federal Direct Unsubsidized Loans during the six-year period prior to the end of the cohort period but suggested that the Department use the lower of the average or the current rate of interest on those loans. The commenter asserted that this approach would ensure that institutions are not penalized for economic factors they cannot control.

Finally, one commenter offered that Federal student loan interest rates, a significant predictor and influencer of borrowing costs, are now pegged to market rates and, as a result, exposed to rate fluctuations. Accordingly, different cohorts of students amassing similar levels of debt will likely see vastly different costs associated with their student loans depending upon when those loans were originated. This, the commenter suggests, will affect default rates and debt-to-earnings measurements, even if program quality and outcomes remain constant.

Discussion: We generally agree with the commenters that the interest rate used to calculate the annual loan payment should reflect as closely as possible the interest rates on the loans most commonly obtained by students. In particular, we agree that using the average interest rate over a six-year period for programs of all lengths might not accurately reflect the annual loan payment of students in shorter programs. However, we cannot adopt the suggestion made by some commenters to use the weighted average of the interest rates on loans at the time they were made or disbursed because we do not have the relevant information for every loan. However, we are revising § 668.404(b)(2)(ii) to account for program length and the interest rate applicable to undergraduate and graduate programs. Specifically, for programs that are typically two years or less in length we will use the average

interest rate over a shorter three-year ''look-back'' period, and use the longer six-year ''look-back'' period for programs over two years in length. In calculating the average interest rate for a graduate program, we will use the statutory interest rate on Federal Direct Unsubsidized loans applicable to graduate programs. Similarly, we will use the undergraduate interest rate on Federal Direct Unsubsidized loans for undergraduate programs. For example, for an 18-month certificate program, we will use the average of the rates for undergraduate loans that were in effect during the three-year period prior to the end of the cohort period.

Finally, we do not see a need to establish separate interest rates for private education loans. The Department does not collect, and does not have ready access to, data on private loan interest rates. The Department could calculate a private loan interest rate only if a party with knowledge of the rate on a loan were to report that data. The institution may be well aware that a student received a private education loan, but would not be likely to know the interest rate on that loan, and could not therefore be expected to provide that data to the Department. The Department could not readily calculate a rate from other sources because lenders offer private loans at differing rates depending on the creditworthiness of the applicant (and often the cosigner).[138] Although some lenders offer private loans for which interest rates are comparable to those on Federal Direct Loans, more commonly private loan interest rates are higher than rates on Federal loans; lenders often set rates based on LIBOR, but use differing margins to set those rates.[139] Thus, we could not determine from available data the terms of private loans obtained by a cohort of borrowers who enrolled in a particular GE program.

The CFPB rule to which the commenter refers does not appear to be relevant to the issue of the interest rate that should be used to calculate loan debt. The CFPB rule defines a ''qualified mortgage'' that is presumed to meet the ability to repay requirements as one ''for which the *'creditor'* underwrites the loan, taking into account the monthly payment for *mortgage-related obligations,* using: The maximum interest rate that may apply during the first five years after the date on which the first regular periodic payment will be due.'' 12 CFR 1026.43(e)(2)(iv). Interest rates during the repayment period on title IV, HEA loans (FFELP and Direct Loans) made on or after July 1, 2006 have been fixed, rather than variable, and therefore the interest rate on a FFELP or Direct Loan made since 2006 remains fixed during the entire repayment term of the loan. 20 U.S.C. 1077A(i); 1087e(b)(7). Because these rates do not change, we see no need to adopt a rule that would cap interest rates for calculation of loan debt at a rate that would vary during the first five years of the repayment period.

Changes: We have revised § 668.404(b)(2) to provide that the Secretary will calculate the annual loan payment for a program using the average of the annual statutory interest rates on Federal Direct Unsubsidized Loans that apply to loans for undergraduate and graduate programs and that were in effect during a three- or six-year period prior to the end of the cohort period.

Comments: One commenter expressed concern that independent, nonprofit, and for-profit institutions that do not charge interest as part of a student's payment plan, either during the time the student is attending the institution or later after the student completes the program, would be discouraged from continuing this practice because the debt burden used to calculate the D/E rates would be overestimated. The commenter suggested that the Department either allow institutions to separate debt on interest-bearing accounts from debt on non-interest bearing accounts so the total loan debt and annual payment amounts are more accurate, or provide that institutions may appeal the loan debt calculation.

Discussion: The Department has crafted the D/E rates measure to assess programs based on the actual outcomes of students to the extent feasible. However, the Department has balanced this interest against the need for uniformity and consistency to minimize confusion and administrative burden. As there is no evidence that interest-free loans are a common practice, we do not believe the interest rate provisions of the regulations will significantly misstate debt burden if they do not specifically recognize interest-free institutional payment plans. Given the low chance of a materially unrepresentative result, simplicity and uniformity outweigh the commenter's concerns.

Changes: None.

Comments: Some commenters disagreed with the Department's proposal to apply the interest rate on Federal Direct Unsubsidized Loans, arguing that this approach would not account for whether students were undergraduate or graduate students, or for the percentage of students who received Subsidized Loans instead of Unsubsidized Loans. Some commenters also asserted that using the Unsubsidized Loan rate would artificially increase the annual loan payment amount used to calculate the D/E rates for a program.

Discussion: We will use the interest rate on Federal Direct Unsubsidized Loans to calculate the annual debt payment for the D/E rates measure for several reasons. First, the majority of students in GE programs who borrow take out Unsubsidized Loans. Second, the rate is one that will be used to calculate debt service on private education loans received by GE students, the most favorable of which are made at rates, available to only a small group of borrowers, that are comparable to the rate on Direct Plus loans (currently 7.21 percent).[140] Third, the rate we choose will be used to calculate debt service not on the entire loan, but, in every instance in which the loan amount is ''capped'' at tuition fees, books, equipment, and supplies, on a lesser amount. This tends to offset the results of a mismatch between the Unsubsidized Loan rate and a lower applicable loan rate.

Changes: None.

Bureau of Labor Statistics (BLS) Data

Comments: A number of commenters urged the Department to base the annual earnings component of the D/E rates on annualized earnings data from BLS, rather than on actual student earnings information from SSA. These commenters were concerned that the lack of access to SSA individual earnings data would hinder an institution's ability to manage the performance of its programs under the D/E rates measure, and therefore advocated for using a publically available source of earnings data, such as BLS.

Other commenters who suggested using BLS data asserted that BLS data are more objective than income data from SSA because of the way that BLS aggregates and normalizes income information to smooth out anomalies.

Discussion: As we stated in the NPRM, we believe that there are significant difficulties with the use of

[138] The best private student loans will have interest rates of LIBOR + 2.0% or PRIME—0.50% with no fees. Such loans will be competitive with the Federal PLUS Loan. Unfortunately, these rates often will be available only to borrowers with good credit who also have a creditworthy cosigner. It is unclear how many borrowers qualify for the best rates, although the top credit tier typically encompasses about 20 percent of borrowers. See Private Student Loans, Finaid.Org, available at *www.finaid.org/loans/privatestudentloans.phtml.*

[139] *Id.*

[140] Private Student Loans, Finaid.Org, available at *www.finaid.org/loans/privatestudentloans.phtml.*

BLS data as the basis for calculating annual earnings. First, as a national earnings data set that aggregates earnings information, BLS earnings data do not distinguish between graduates of excellent and low-performing programs offering similar credentials.

Second, BLS earnings data do not relate directly to a program. Rather, the data relate to a Standard Occupational Classification (SOC) code or a family of SOC codes based on the work performed and, in some cases, on the skills, education, or training needed to perform the work at a competent level. An institution may identify related SOC codes by using the BLS CIP-to-SOC crosswalk that lists the various SOC codes associated with a program, or the institution may identify through its placement or employment records the SOC codes for which students who complete a program 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. However, BLS provides earnings data at various percentiles (10, 25, 50, 75, and 90), and the percentile earnings do not relate in any way to the educational level or experience of the persons employed in the SOC code.

Accordingly, it would be difficult for an institution to determine the appropriate earnings for a program's students, particularly for students who complete programs with the same CIP code but at different credential levels. For example, BLS data would not show a 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 individuals 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 D/E rates.

Finally, and perhaps most significantly, BLS earnings do not directly show the earnings of those students who complete a particular program at a particular institution. Making precisely such an assessment is essential to the GE outcome evaluation. 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 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 program funds. The aggregate earnings data we obtain from SSA will reflect the actual earnings of students who completed a program without the ambiguity and complexity inherent in using BLS data for a purpose outside of its intended scope.

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 programs. In order to confirm the accuracy of the data used in a BLS-based alternate earnings calculation, § 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 for a limited period of time, despite its shortcomings, no longer apply. Most institutions have now had experience with SSA earnings data, through the 2011 GE informational rates and 2012 GE informational rates; thus, for many programs, institutions are no longer in the situation where they would be receiving earnings data for the first time under the regulations.

Changes: None.

Debt Roll-Up

Undergraduate and Graduate Programs

Comments: Some commenters supported proposed § 668.404(d)(2), under which the Department would attribute all undergraduate loan debt to the highest undergraduate credential that a student completed, and all graduate loan debt to the highest graduate credential that a student completed, when calculating the D/E rates for a program. They believed that this would address concerns raised by the 2011 Prior Rule that an institution's graduate programs would be disadvantaged if a student pursued a graduate degree after completing an undergraduate program at the same institution. They explained that, under the 2011 Prior Rule, all of a student's loan debt for an undergraduate program would have been attributed to the graduate program, which could have put the graduate program at a disadvantage and, as a result, might have deterred institutions from encouraging students to pursue further study. Although supportive of the Department's proposal, one commenter suggested that the Department should go further by distinguishing between loan debt incurred for master's and doctoral programs. The commenter argued that it is difficult to justify attributing debt from a shorter master's program to a longer doctoral program and that institutions would be deterred from encouraging students to pursue doctoral-level study.

Another commenter believed that loan amounts should be attributed to a higher credentialed program only if the student was enrolled in a program in the same field. The commenter questioned the Department's authority to use debt from two unrelated programs and attribute it to only one of them. The commenter opined that in some cases, students might enroll in one institution to earn an associate degree in a particular field, and then subsequently enroll in a higher credentialed program in a different field and may have to take additional coursework to fulfill the requirements of the second degree program. The commenter was concerned that the outcomes for these students would skew the D/E rates calculation for the higher credentialed program, resulting in inaccurate information for the public about the cost of completing the program.

Other commenters disagreed with the Department's proposal to attribute a student's loan debt to the highest credential subsequently completed by the student. These commenters believed that this approach would inflate and double-count loan debt of students who pursue multiple degrees at institutions because an institution would report and disclose debt at a lower credential level and then report the combined debt at a higher credential level. They were also concerned that attributing loan debt incurred for multiple programs to just the highest credentialed program would be confusing and misleading for prospective students and the public and would discourage students from enrolling in higher credentialed programs. The commenters recommended that the Department attribute loan debt and costs to each

completed program separately instead of combining them.

Discussion: Although we appreciate the general support for our proposal to disaggregate the loan debt attributed to the highest credential completed at the undergraduate and graduate levels, we are not persuaded that further disaggregating loan debt between masters and doctoral-level programs is needed or warranted. As noted by some of the commenters, our proposal was intended to level the playing field between institutions that offer only graduate-level programs and institutions that offer both undergraduate and graduate programs. Without this distinction, the loan debt for students completing a program at a graduate program-only institution would be less than the loan debt for students who completed their undergraduate and graduate programs at the same institution because the student's undergraduate loan debt would be attributed to the graduate-level program in the latter scenario.

Although we acknowledge that one student may take a different path than another student in achieving his or her educational objectives and that some coursework completed for a program may not be needed for, or transfer to, a higher-level program, we believe that the loan debt associated with all the coursework is part and parcel of the student's experience at the institution in completing the higher-level program. Moreover, since the student's earnings most likely stem from the highest credentialed program completed, we believe our approach will result in D/E rates that more closely tie the debt incurred by students for their training to the earnings that result from that training.

We note that the commenters' description of how loan debt would be reported for students enrolled in a lower credentialed program who subsequently enroll in a higher credentialed program at the same institution is not entirely accurate. Though it is correct that loan debt from the lower credentialed program will be attributed to the completed higher credentialed program, the loan debt associated with that higher program prior to the amounts being ''rolled-up'' does not, as is suggested by the commenter, include loan debt from the lower credentialed program.

Changes: None.

Comments: One commenter asserted that students frequently withdraw from a higher credentialed program and subsequently complete a lower credentialed program at the same institution and was concerned that proposed § 668.404(d)(2) would not adequately account for the total debt that a student has accumulated for both programs and must repay. Specifically, the commenter believed that a student's loan debt from a higher credentialed program that the student did not complete would not be included in the D/E rates calculation for either that program or in the calculation for the lower credentialed program that the student completed. The commenter recommended that institutions be required to report the total debt that a student incurs while continuously enrolled, as well as the debt incurred in each program, for a more accurate picture of how much debt students have accumulated and their ability to repay their loans. The commenter also argued that this approach would provide an incentive for institutions to monitor students who are not meeting the academic requirements for a higher credentialed program and to counsel them on alternatives such as completing a lower credentialed program before they have taken on too much debt.

Discussion: The commenter is correct that the loan debt incurred for a higher credentialed program from which the student withdrew will not be attributed to a lower credentialed program that the student subsequently completed at the same institution. While we appreciate the commenter's concerns, as we noted previously in this section, the loan debt associated with the student's prior coursework at the institution is only counted if the student completes a higher-credentialed program because earnings most likely stem from that program. In this case, the only program completed is the lower credentialed program so only loan debt associated with that program is included in the D/E rates measure.

Changes: None.

Comments: One commenter requested that the Department clarify how loan debt incurred by a student for enrollment in a post-baccalaureate GE program, graduate certificate GE program, and graduate degree GE program would be attributed under proposed § 668.404(d)(2)(ii) and (iii) and asked whether both of these provisions were needed.

Discussion: First, we note that loan debt incurred for enrollment in a post-baccalaureate program would be attributed to the highest credentialed undergraduate GE program subsequently completed by the student at the institution, rather than to the highest graduate GE program. This treatment is consistent with the definition of ''credential level'' in § 668.402, which specifies that a post-baccalaureate certificate is an undergraduate program. Second, we agree with the commenter that the provisions in § 668.404(d)(2)(ii) and (iii) are redundant.

Changes: We have removed § 668.404(d)(2)(iii).

Common Ownership/Control

Comments: Some commenters warned that including loan debt incurred by a student for enrollment in programs at institutions under common ownership or control only at the Department's discretion under proposed § 668.404(d)(3) created a loophole. They believed that bad actors would exploit this loophole to manipulate the D/E rates for their programs by setting up affiliated institutions and encouraging students to transfer from one to the other. They were concerned that the Department would be unable or unwilling to apply loan debt incurred at an affiliated institution without specific criteria as to what would trigger a decision to include loan debt incurred at an affiliated institution in the D/E rates calculation for a particular program. To address this risk, these commenters recommended that the Department always include in a program's D/E rates calculation loan debt that a student incurred for enrollment in a program of the same credential level and CIP code at another institution under common ownership or control, as proposed in the NPRM for gainful employment published in 2010. Short of this recommendation, they suggested that, at a minimum, the Department clarify the circumstances in which the Department would exercise its discretion in proposed § 668.404(d)(3) to attribute loan debt from other institutions under common ownership or control.

Other commenters acknowledged the Department's concern that some bad actors might try to manipulate the D/E rates calculations for their GE programs by encouraging students to transfer to affiliated institutions, but they did not believe that the Department should always attribute loan debt incurred at another institution under common ownership or control to the D/E rates calculation for the program. They suggested that institutions should not be held responsible for a student's individual choice to move to an affiliated institution to pursue a more advanced degree simply because the institutions share a corporate ownership structure. They recommended that the Department specify that it would only attribute debt incurred at an institution under common ownership or control if the two institutions do not have

separate accreditation or admission standards.

One commenter similarly requested clarification about the circumstances in which the Department would include loan debt incurred at another institution, but also suggested that the provision allowing the Department to include loan debt incurred at an institution under common ownership or control was unnecessary, given the proposed changes in § 668.404(d)(2). They believed that requiring institutions to attribute loan debt to the highest credentialed program completed by the student provides adequate information on the outcomes of students at each institution.

Some commenters argued that the Department should never include loan debt that a student incurred at another institution, even if the institutions are under common ownership and control. One of these commenters argued that this provision would unfairly target for-profit institutions, noting that some public institutions, while not owned by the same corporate entity, are coordinated through a single State coordinating board or system tasked with developing system-wide policies. The commenter believed that the Department had not provided sufficient justification for treating proprietary institutions under common ownership or control differently from State systems with, in their view, parallel governance structures. Further, the commenter noted that institutions under common ownership or control might have different institutional missions and academic programs, and that it would therefore not be fair to attribute loan debt incurred for a program at one institution to a program at another.

Other commenters believed that it would be unfair to combine loan debt from institutions under common ownership or control, arguing that it could skew a program's D/E rates. They were concerned that, in cases in which two students complete the same credential at the same institution, and one student goes on to complete a higher credential at an affiliated institution but the other completes a similar program at an unaffiliated institution, the D/E rates for the programs would not provide prospective students with a clear picture of the debt former students incurred to attend.

Discussion: We acknowledge the concerns of commenters who urged the Department to always include loan debt incurred at an affiliated institution in the D/E rates calculation for a particular program. We clarified in the NPRM that 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 such cases, the Secretary has the discretion to make adjustments. We believe this authority is adequate both to deter the type of abuse warned of by the commenters and act on instances of such abuse where necessary.

We remind those commenters who suggested that the Department should never include loan debt incurred at another institution, even if the institutions are under common control, that, except for loan debt associated with education and training provided by another institution under a written arrangement between institutions as discussed in ''Tuition and Fees'' in this section, we generally would not include loan debt from other institutions students previously attended, including institutions under common ownership or control.

We do not agree that this provision unfairly targets for-profit institutions subject to common ownership or control by not treating public institutions operating under the aegis of a State board or system in the same way. First, in the normal course of calculating D/E rates, programs at both types of institutions will be treated the same and the debts would not be combined. The debts would only be combined at institutions under common ownership and control in what we expect to be rare instances of the type of abuse described in this section. Second, since loan debt is ''rolled-up'' to the highest credentialed program completed by the student, any student who transferred into a degree program at a public institution would be enrolling in a program that is not a GE program, and therefore not subject to these regulations. The potential abuse is unlikely to arise when student debt from a certificate program at one institution would be rolled up to a certificate program that a student completed at another institution under the same ownership and control.

Changes: None.

Exclusions

Comments: Several commenters expressed concerns about the provisions in § 668.404(e) under which the Department would exclude certain categories of students from the D/E rates calculation. Commenters argued that, because the Department would exclude students whose loans were in deferment, or who attended an institution, for as little as one day during the calendar year, institutions would not be held accountable for the outcomes of a significant number of students. Some commenters suggested that the Department should not exclude these students unless their loans were in a military-related deferment status for 60 consecutive days or they attended an eligible institution on at least a half-time basis for 60 consecutive days. The commenters cited as a basis for the 60 days the provisions for returning title IV, HEA program funds under § 668.22 and reasoned that 60 percent of a three- to four-month term is about 60 days. In addition, they noted that to qualify for an in-school deferment, a student must be enrolled on at least a half-time basis and asserted that this provision provides a reasonable basis for excluding from the D/E rates calculation only students enrolled at least half-time.

Some commenters argued that students whose loans are in a military-related deferment status should not be excluded because these individuals made a valid career choice. The commenters also argued that because those students have military-based earnings, excluding them could have a significant impact on the earnings for the D/E rates calculations, as well as on the number of students included in the cohort. The commenters said that if the Department retains the military deferment exclusion, all individuals in military service should be excluded, based on appropriate evidence, not just those who applied for a deferment.

Some commenters supported the proposed exclusions, stating there is no evidence that supports establishing a time period or minimum number of days after which earnings should be excluded and that attempting to do so would be arbitrary and overly complex.

Discussion: While we appreciate the commenters' recommendation that a student must attend an institution or have a loan in a military-deferment status for minimum number of days in the earnings year before these exclusions would apply, we do not believe there is a sound basis for designating any particular number of minimum days. Accordingly, we will apply the exclusions if a student was in either status for even one day out of the year.

We do not agree that the regulations regarding the return of title IV, HEA program funds provide a basis to set 60 days as the minimum. Students with military deferments or who are attending an institution during the earnings year are excluded from the D/E rates calculations because they could have less earnings than if they had chosen to work in the occupation for which they received training. The 60 percent standard in the regulations

regarding the return of title IV, HEA program funds is unrelated to this rationale and, as a result, not applicable. With regard to the suggestion that a student must be enrolled on at least a half-time basis, we continue to believe that it is inappropriate to hold programs accountable for the earnings of students who pursue additional education because, regardless of course load, those students could have less earnings than if they chose to work in the occupation for they received training.

As previously discussed, the earnings of a student in the military could be less than if the student had chosen to work in the occupation for which they received training. Further, a student's decision to enlist in the military is likely unrelated to whether a program prepares students for gainful employment. Accordingly, it would be unfair to assess a program's performance based on the outcomes of such students. We believe that this interest in fairness outweighs any potential impact on the mean and median earnings calculations and number of students in the cohort period.

The military deferment exclusion would apply only to those individuals who have actually received a deferment. To the extent that borrowers serving in the military request such deferments, they are asking for assistance in the form of a period during which repayment of principal and interest is temporarily delayed. Borrowers who qualify for a military deferment, but do not request one, have made the determination that their income is sufficient to permit continued repayment of student loan debt while they are serving in the military. The Department confirms whether a borrower is enlisted in the military as part of the deferment approval process. Relying on this determination will be much more efficient and accurate than making individual determinations as to military status solely for the purposes of these regulations.

Changes: None.

Comments: Some commenters suggested that the Department exclude students who become temporarily disabled during the earnings year, opining that any earnings used for these students would distort the D/E rates. Other commenters suggested that a student with a loan deferment for a graduate fellowship or for economic hardship related to the student's Peace Corps service at any point during the calendar year for which the Secretary obtains earnings information should be excluded from the D/E rates calculation. The commenters reasoned that graduate fellowships and Peace Corps service are competitive opportunities, and that only individuals who received a quality education would have been accepted. They concluded that a GE program's D/E rates should not be affected by students who are accepted into these programs because their low wages would not be indicative of the quality of the program.

Discussion: As a general matter, we believe the additional exclusions mentioned by the commenters are rare and would not materially affect the D/E rates, so it would not be cost effective to establish reporting streams for gathering and verifying the information needed to apply these exclusions. We note that there are currently no deferments for students in the Peace Corp or who are temporarily disabled, but students with graduate fellowships may be excluded if they are attending an institution during the earnings year.

Changes: None.

Comments: Some commenters argued that students who are not employed for a portion of the earnings year should be excluded from the D/E rates calculation.

Discussion: We disagree that we should exclude from the D/E rates calculation students who are not employed for a portion of the earnings year. As discussed under ''§ 668.405 Issuing and Challenging D/E Rates,'' if graduates are unemployed during the earnings year, it is reasonable to attribute this outcome to the performance of the program, rather than to individual student choices.

Changes: None.

Comments: One commenter suggested that institutions should be provided access to Department databases to obtain the information necessary to determine whether students who complete a program satisfy any of the exclusion criteria.

Discussion: If a student has attended a particular institution, that institution already has access to NSLDS information for the student. In addition, the data provided to institutions with the list of students who completed the program will have information on which students were excluded from the calculation and which exclusions were applied. If an institution has evidence that the data in NSLDS are incorrect, it may challenge that information under the procedures in §§ 668.405 and 668.413.

Changes: None.

N-Size

Comments: Several commenters recommended that the Department use a minimum n-size of 10 students, instead of 30, when calculating the D/E rates. The commenters argued that an n-size of 30 is unnecessarily large in view of the Department's analysis in the NPRM showing that an n-size of 10 adequately provides validity, and that there would be only a small chance that a program would erroneously be considered to not pass the D/E rates measure. One of these commenters expressed concern that increasing the n-size from 10 to 30 would leave unprotected many students enrolled in GE programs and did not believe this was sufficiently emphasized in the NPRM. Specifically, the commenter pointed to analysis in the NPRM showing that, using an n-size of 30, more than one million students would enroll in GE programs that would not be evaluated under any of the proposed accountability metrics.

Another commenter similarly urged the Department to select the smallest n-size needed for student privacy and statistical validity, and design the final regulations so that programs that capture the vast majority of career education program enrollment are assessed under the accountability metrics. The commenter was concerned in particular that the provision in the NPRM to disaggregate undergraduate certificates into three credential levels based on their length would result in many programs falling below the minimum n-size of 30 and therefore not being evaluated under these regulations.

One commenter contended that the Department's statistical analysis showed that the probability of a program that is near failing actually losing eligibility under the regulations is 1.4 percent. The commenter argued that, because this probability was only for programs on the margin, the chance that a randomly chosen program could lose eligibility when it was actually passing approached zero. The commenter believed that an n-size of 30 would be a weaker standard and that the data demonstrated accuracy of the metrics at an n-size of 10. As a result, the commenter concluded that there is little justification for an n-size of 30 and allowing hundreds of failing programs to remain eligible for title IV, HEA program funds.

Other commenters also believed that the larger n-size would allow some failing programs to pass the accountability metrics. One of these commenters cited the Department's analysis, which stated that using an n-size of 10 will cover 75 percent of all students enrolled in GE programs while using an n-size of 30 would only cover 60 percent of students enrolled in GE programs. The commenter said that by moving to a larger n-size, the

Department estimates that over 300 programs that would fail the D/E rates measure would no longer be held accountable and that an additional 439 programs in the ''zone'' would not be subject to the D/E rates measure. The commenter concluded that the larger n-size creates a loophole that will allow hundreds of failing programs to continue to receive title IV, HEA program funds. Other commenters similarly concluded that an n-size of 30 creates a loophole where institutions would have the ability to adjust their program size to evade the regulations.

On the other hand, several commenters supported the Department's proposal to use a minimum n-size of 30. These commenters stated that the substantial majority of students in GE programs would be captured using this n-size. These commenters believed that an n-size of 10 is too small and not statistically significant, and that with an n-size of 10, the results of a small number of students would sway outcomes from year to year and outcomes would be more sensitive to economic fluctuations. The commenters asserted that when compared with outcomes under an n-size of 10, outcomes under an n-size of 30 will always have a lower standard error and are therefore likely to lead to more accurate results. The commenters argued that a larger sample size will have less variability and yield more reliable results than a smaller one taken from the same population. One commenter referred to Roscoe, J.T., *Fundamental Research Statistics for the Behavioral Sciences*, 1975, which, according to the commenter, cites as a rule of thumb that sample sizes larger than 30 and less than 500 are appropriate for most research. The commenter suggested that the Department's analysis showed that the average probability that a passing program would be mischaracterized as a zone program in a single year drops from 6.7 percent to 2.7 percent when the n-size changes from 10 to 30.

Another commenter argued that a minimum n-size of 10 increases the potential that a particular student in a cohort could be identified, putting student privacy at risk. Other commenters also asserted that an n-size of 10 might result in the disclosure of individually identifiable information, especially at the extremes of high and low earners.

One commenter believed that volatility resulting from too small of a sample size would create uncertainty that would chill efforts to launch new programs.

Discussion: We believe that an n-size of 30 strikes an appropriate balance between accurately measuring D/E rates for each program and applying the accountability metric to as many gainful employment programs as possible. Although a number of commenters supported our proposal to use an n-size of 30, in general we do not agree with their reasoning for doing so.

We disagree that mitigating the impact of economic fluctuations on D/E rates provides a direct rationale for choosing a higher minimum n-size. The Department has not found any evidence that D/E rates for smaller programs are more sensitive to economic fluctuations than larger programs. N-size affects the variability of D/E rates from year to year due to statistically random differences in the D/E rates of individual students. The greater the n-size, the less these year-to-year differences will affect measures of central tendency, such as those used to calculate the D/E rates. As discussed in ''Section 668.403 Gainful Employment Program Framework,'' we believe the impact of economic fluctuations on program performance is mitigated because programs must fall in the zone for four consecutive years before becoming ineligible for title IV, HEA program funds. We also include multiple years of debt and earnings data in our D/E rates calculation to smooth out fluctuations in the economic business cycle, along with fluctuations in the local labor market.

We also disagree that a minimum n-size of 30 is preferable to an n-size of 10 in order to minimize year-to-year fluctuations, per se. A program's D/E rates may change from year to year due to changes in educational quality provided to students, prices charged by the institution, or other factors. These fluctuations are likely to occur regardless of n-size and we view them as accurate indications of changes in programmatic performance under the D/E rates measure.

We further disagree that a minimum n-size of 30 is necessary to protect the privacy of students. Based on NCES standards, an n-size of 10 is sufficient to protect the privacy of students on measures of central tendency such as the D/E rates measure.

Finally, we disagree that our data analysis indicates that a D/E rates measure with a minimum n-size of 10 is statistically unreliable. Our analysis indicates that the probability of mischaracterizing a program as zone or failing due to statistical imprecision when the n-size is 10 is 6.7 percent. By most generally accepted statistical standards, this probability of mischaracterization is modest. For this reason that we believe a minimum n-size of 10 produces D/E rates, and additionally median loan debt and mean and median earnings calculations, sufficiently precise for disclosure.

As discussed in the NPRM, we believe a minimum n-size of 30 is a more appropriate threshold for the D/E rates measure when it is used as an accountability metric—not because it would be invalid at a minimum n-size of 10, but because even slight statistical imprecision could lead to mischaracterizing a program as zone or failing which would precipitate substantial negative consequences, such as requiring programs to warn students they could lose eligibility for title IV, HEA program funds. Given these consequences, we believe it is more appropriate to set the minimum n-size at 30 for accountability determinations.

So, even though an n-size of 10 would provide a sufficiently precise measure of D/E rates, our analysis shows an n-size of 30 is more appropriate because it reduces the possibility of mischaracterizing a program as zone or failing in a single year. It also reduces the possibility of a program becoming ineligible as a result of multiple mischaracterizations over time.

As provided in the NPRM, if the minimum number of students completing a program necessary to calculate the program's D/E rates is set at 30, 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, 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.

Although the difference in the precision of the D/E rates with n-sizes of 10 and 30, respectively, may seem modest, there are substantial benefits in reducing the probability of mischaracterization of being in the zone from 6.7 percent to 2.7 percent. While a program will not lose eligibility if it is mischaracterized in the zone for a single year, it will face some negative consequences because the institution could lose eligibility for title IV, HEA program funds within four years. Further, the program's D/E rates will be published by the Department and potentially subject to disclosure by the institution.

Additionally, there are benefits to ensuring that the probability of a

passing program being mischaracterized as a failing program in a single year is close to zero. At an n-size of 10, the probability is as high as 0.7 percent, while at an n-size of 30 it is close to 0 percent. By setting the n-size at 30, it is a virtual certainty that passing programs will not mischaracterized as failing the D/E rates measure due to statistical imprecision. In this case, reducing imprecision is particularly important because programs would be required to warn students they could lose eligibility as soon as the next year for which D/E rates are calculated.

In addition to reducing the probability of single-year mischaracterizations, it is appropriate to set an n-size of 30 to reduce the probability of a passing program losing eligibility due to statistical imprecision and anomalies. Because the consequences are substantial, it is important we set the minimum n-size at 30 in order to reduce the probability of statistical mischaracterization to near zero. As stated in the NPRM, 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 looking across the four years that a program could be in the zone before being determined 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 as high as 1.4 percent. Although we are unable to provide precise probabilities for the scenario in which a program fails the D/E rates measure in two out of three years due to limitations in our data, our analysis indicates the probability of a passing program becoming ineligible due to failing the D/E rates measure two out of three years could be as high as 0.7 percent with a minimum n-size of 10.[141] In contrast, the probability of mischaracterization due to failing the D/E rates measure in two out of three years is close to zero percent with a minimum n-size of 30.

Although setting a minimum n-size of 30 reduces the percentage of programs that are evaluated by the D/E rates measure, which may result in more programs with high D/E rates remaining eligible than with a minimum n-size of 10, we believe the consequences of mischaracterizing programs due to statistical imprecision outweighs this concern.

We also do not believe that the possibility of increased ''churn'' due to programs attempting to decrease the number of students who complete a program to below 30 outweighs the benefits of greater statistical precision. First, if the minimum n-size is 10, it is unclear that we would reduce the possibility of ''churn.'' Programs, particularly programs near an n-size of 10, could still attempt to lower the number of students completing the program to avoid being evaluated. Second, we have included several provisions in the regulations to discourage programs from increasing non-completion among students. As discussed in ''§ 668.403 Gainful Employment Program Framework,'' among the items institutions may be required to disclose are completion rates and pCDR, which will provide prospective students with information to avoid enrollment in high ''churn'' programs.

Changes: None.

Comments: One commenter noted it is difficult to evaluate the impact of the n-size provision of the regulations because the Department changed how it defines a program by proposing to break out undergraduate certificates into three credential levels based on program length.

Discussion: As noted previously, we are no longer classifying certificate programs based on program length.

Changes: None.

Transition Period

Comments: A number of commenters expressed concern that the proposed transition period would not provide sufficient time for programs to improve after the regulations go into effect. Specifically, commenters questioned whether an institution would be able to improve a program's D/E rates in the years following an initial failure, because the students included in calculating the D/E rates for the first several years will have already graduated from the program. These commenters asserted that, as a result, it will be too late for institutions to improve program performance through changing the program's admissions standards or improving financial literacy training, debt counseling, and job placement services. One of these commenters contended that the data that will be used to calculate D/E rates in 2015 is already fixed and cannot be affected by any current program improvement efforts.

Another commenter asserted that the Department's proposal to consider only the debt of students graduating in the current award year during the transition period would not adequately address the challenge faced by programs longer than one year because, regardless of any recent reduction in program cost, students' debt loads would initially be affected by debt undertaken to support earlier, potentially more costly, years in the program. Consequently, institutions would find it very difficult to improve program outcomes for longer programs during the transition period.

One commenter suggested that the Department defer the effective date of the regulations and revise the transition period so that institutions could affect the borrowing levels for all students in a cohort period throughout their period of enrollment before the program would be evaluated under the D/E rates.

One commenter contended that SSA earnings data would not be released until 2016 when the first D/E rates are issued. This commenter suggested eliminating the transition period in favor of four years of informational rates. Another commenter suggested there should be two years of informational rates before sanctions begin.

Some commenters proposed limiting the impact of the regulations during the transition period by reinstituting a cap on the number of programs that could become ineligible in the early years of implementation in order to give failing programs another year to improve. Several commenters recommended including the five percent cap on ineligible programs that was included in the 2011 Prior Rule.

Some commenters stated that the proposed transition period was better than the five percent cap in the 2011 Prior Rule, but were skeptical that institutions would use the transition period to make changes to poorly performing programs. Instead, they argued that institutions will give scholarships or tuition discounts to students completing programs, which would result in improved D/E rates but not lower tuition for all students.

Discussion: In view of the comments that the proposed four-year transition period did not provide sufficient time for programs to improve, we are extending the transition period. As illustrated in the following chart, the transition period is now five years for programs that are one year or less, six years for programs that are between one

[141] 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.

and two years, and seven years for programs that are longer than two years.

Award year for which the D/E rates are calculated	2014–2015	2015–2016	2016–2017	2017–2018	2018–2019	2019–2020	2020–2021	2021–2022
Two-year cohort	2010–2011 & 2011–2012	2011–2012 & 2012–2013	2012–2013 & 2013–2014	2013–2014 & 2014–2015	2014–2015 & 2015–2016	2015–2016 & 2016–2017	2016–2017 & 2017–2018	2017–2018 & 2018–2019
Transition year	1	2	3	4	5	6	7	8
Programs less than one year	2014–2015	2015–2016	2016–2017	2017–2018	2018–2019	2015–2016 & 2016–2017	.....	.....
Programs between one and two years	2014–2015	2015–2016	2016–2017	2017–2018	2018–2019	2019–2020	2016–2017 & 2017–2018	.....
Programs more than two years	2014–2015	2015–2016	2016–2017	2017–2018	2018–2019	2019–2020	2020–2021	2017–2018 & 2018–2019

For a GE program that is failing or in the zone for any award year during the transition period, in addition to calculating the regular D/E rates the Department will calculate alternate, or transitional, D/E rates using the median loan debt of the students who completed the program during the most recently completed award year instead of the median loan debt for the two-year cohort. For example, as shown in the chart, in calculating the transitional D/E rates for the 2014–2015 award year, we will use the median loan debt of the students who completed the program during the 2014–2015 award year instead of the median loan debt of the students who completed the program in award years 2010–2011 and 2011–2012. For programs that are less than one year, we will calculate transitional D/E rates for five award years—2014–2015 through 2018–2019. After the transitional D/E rates are calculated for those award years, the transition period expires and the Department uses only the median loan debt of the students in the cohort period to calculate the D/E rates for subsequent award years. The first D/E rates the Department will calculate after the transition period will be for award year 2019–2020. As shown in the chart, the two-year cohort period for that award year includes the students who completed the program during the 2015–2016 and 2016–2017 award years. So, for programs that are less than one year in length, the five-year transition period ensures that most of the students in the two-year cohort period began those programs after these final regulations are published. We applied the same logic in determining the transition periods for programs that are between one and two years, and for programs that are over two years long. Consequently, institutions will be able to make immediate reductions in the loan debt of students enrolled in its GE programs, and those reductions will be reflected in the transitional D/E rates.

We note that the transitional D/E rates would operate in conjunction with the zone to allow institutions to make improvements to their programs in the initial years after the regulations go into effect in order to pass the D/E rates measure. That is, an institution with a program in the zone will have four years to lower loan debt in an effort to achieve passing results for that program. For a failing program, an institution that lowers loan debt sufficiently at the outset of the transition period could move the program into the zone and thereby avoid losing eligibility. The institution would then have additional transition and zone years to continue to improve the program. Moreover, because the Department will provide the regular D/E rates to institutions during the transition period, institutions will be able to gauge the amount of the loan reduction needed for their programs to pass the D/E rates measure once the transition period concludes.

The transition period runs from the first year for which we issue D/E rates under these regulations. The length of the transition period is determined by the length of the program and the number of years we have issued D/E rates under this subpart—not the number of years that we have issued D/E rates for the particular GE program. We may not issue D/E rates for a particular GE program for a particular year for several reasons, such as insufficient n-size, but each year we issue any D/E rates for the regulations is included in any transition period whether or not we issued D/E rates for a specific program in a given year.

We believe that extending the number of years that the transition period will remain in effect is not only responsive to concerns raised by the commenters about the time that institutions need to improve program performance but that doing so will result in tangible benefits for students.

We believe that this option better serves the purposes of the regulations than the provision in the 2011 Prior Rule setting a cap on the number of programs that could be determined ineligible. The cap afforded institutions an opportunity to avoid a loss of eligibility without taking any action to improve their programs. The transition period provisions in these regulations provide institutions an incentive to improve student outcomes as well as an opportunity to avoid ineligibility.

We do not agree that delaying implementation of the regulations or providing informational rates for a set period of time before imposing consequences will be as effective as the revised transition period. The purpose of the transition period is to provide institutions with an incentive to make improvements in their programs so that students will see improved outcomes. Delaying implementation or only providing informational rates the first few years the regulations are in effect would likely create a disincentive for programs to make improvements, which in turn would negatively affect students.

With the changes we are making in these final regulations, we believe that institutions will have a significant incentive to make improvements. It is possible that an institution may also seek to improve its D/E rates by giving scholarships or tuition discounts to students completing the program. A scholarship or tuition discount benefits the student by reducing debt burden,

and therefore we would not discourage an institution from offering that type of benefit to its students.

Changes: We have revised the regulations in § 668.404(g) to provide that the transition period is five award years for a program that is one year or less in length; six award years for a program that is between one and two years in length; and seven award years for a program that is more than two years in length.

90/10 Rule

Comments: Several commenters argued that the proposed definition of ''gainful employment,'' as reflected in the D/E rates measure, conflicts with the 90/10 provisions in section 487(a)(24) of the HEA, under which for-profit institutions must derive at least 10 percent of their revenue from sources other than the title IV, HEA programs.

Some of these commenters opined that the regulations would limit the ability of for-profit institutions to increase tuition since increases in tuition correlate strongly with increases in Federal and private student loan debt. The commenters stated that increasing tuition beyond the total amount of Federal student aid available to students is the principal means available to for-profit institutions for complying with the 90/10 provisions. Consequently, the commenters reasoned that it would be extremely difficult for institutions to comply with both the GE regulations and the 90/10 provisions, particularly for institutions that are at or near the 90 percent limit, that enroll predominately students who are eligible for Pell Grants, or that are located in States where grant aid is not available to for-profit institutions. One of these commenters asked the Department to refrain from publishing any final regulations addressing student debt until the Department works with Congress to modify the 90/10 provisions to address this conflict.

Other commenters contended that the proposed regulations are contrary to the 90/10 provisions because as tuition decreases, the chances increase that institutions will not be able to comply with the 90/10 provisions because the percentage of tuition that students pay with title IV, HEA program funds will remain constant or increase. Some commenters concluded that as institutions attempt to balance the requirements of these regulations with their 90/10 obligations, opportunities for students who rely heavily on title IV, HEA program funds will be curtailed, particularly because the Department interprets the HEA to prohibit institutions from limiting the amount students may borrow on an across-the-board or categorical basis.

Other commenters argued that if one of the objectives of these regulations is to reduce tuition (and by implication, student loan debt), this objective conflicts directly with the 90/10 provisions, which often lead to tuition increases resulting from mathematical expediency. The commenters stated that because institutions are prohibited from capping the amount students may borrow, but are effectively given incentives to maintain tuition at amounts higher than the Federal loan limits, these regulations would place institutions at risk of violating the 90/10 provisions.

Similarly, other commenters stated that for-profit institutions are often prevented from reducing tuition because they must satisfy the 90/10 provisions and because they are prohibited from reducing borrowing limits for students in certain programs. The commenters suggested that the Department use its Experimental Sites authority as a way to develop a better approach for making programs more affordable. Specifically, the commenters proposed that institutions participating in an approved experiment could be exempt from the 90/10 provisions in order to reduce the cost of a program to a level aligned with the cost of delivering that program and the expected wages of program graduates. The commenters offered that under this approach, an institution could be required to submit a comprehensive enrollment management and student success plan and annual tuition increases would be indexed to annual rates of inflation. Or, at a minimum, the commenters suggested that the Department exempt institutions that would otherwise fail the 90/10 revenue requirement by lowering tuition amounts to pass the D/E rates measure. In addition, the commenters offered other suggestions, such as exempting from the 90/10 provisions institutions that serve a majority of students who are eligible for Pell Grants or, instead of imposing sanctions on programs that fail the D/E rates measure, using the D/E rates calculations to set borrowing limits in advance to prevent students from taking on too much loan debt.

Another commenter believed that if the 90/10 provisions were eliminated, there would be no need for the D/E rates measure. The commenter opined that the 90/10 provisions place constraints on market forces that, absent these provisions, would lead to reductions in tuition at for-profit institutions, shorten vocational training, reduce student indebtedness, and eliminate the need for funding above the Federal limits.

Discussion: The 90/10 provisions are statutory and beyond the scope of these regulations. However, we are not persuaded that the 90/10 provisions conflict with the D/E rates measure. In a report published in October 2010,[142] GAO did not find any relationship between an institution's tuition rate and its likelihood of having a very high 90/10 rate. GAO's regression analysis of 2008 data indicated that schools that were (1) large, (2) specialized in healthcare, or (3) did not grant academic degrees were more likely to have 90/10 rates above 85 percent when controlling for other characteristics. Other characteristics associated with higher than average 90/10 rates included (1) high proportions of low-income students, (2) offering distance education, (3) having a publicly traded parent company, and (4) being part of a corporate chain. GAO defined ''very high'' as a rate between 85 and 90 percent, and about 15 percent of the for-profit institutions were in this range. GAO found that, in general, there was no correlation between an institution's tuition rate and its average 90/10 rate. In one exception, GAO found that institutions with tuition rates that did not exceed the 2008–2009 Pell Grant and Stafford Loan award limits (the award amounts were for first-year dependent undergraduates) had slightly higher average 90/10 rates than other institutions, at 68 percent versus 66 percent.

The Department's most recent data on 90/10, submitted to Congress in September 2014,[143] show that only 27 of 1948 institutions had ratios over 90 percent, and that about 21 percent had ratios in the very high range of 85 to 90 percent. The GAO report and the Department's data suggest that most institutions could reduce tuition costs without the consequences envisioned by the commenters.

Several other factors also suggest that any tension between the 90/10 provisions and the GE regulations can be managed by most institutions. First, some of the 90/10 provisions that are not directly tied to the title IV, HEA program funds received to pay institutional charges for eligible programs, such as allowing an institution to count income from programs that are not eligible for title IV, HEA program funds, count revenue

[142] United States Government Accountability Office, ''For Profit Schools: Large Schools and Schools that Specialize in Healthcare Are More Likely to Rely Heavily on Federal Student Aid,'' October 2010, available at *www.gao.gov/new.items/d114.pdf.*

[143] Available at *http://federalstudentaid.ed.gov/datacenter/proprietary.html.*

from activities that are necessary for the education and training of students, or count as revenue payments made by students on institutional loans, make it easier for institutions to comply with the 90/10 provisions. Second, institutions have opportunities to recruit students that have all or a portion of their costs paid from other sources. In addition, as a result of the changes to the HEA in 2008, an institution may fail the 90/10 revenue requirement for one year without losing eligibility, and the institution can retain its eligibility so long as it does not fail the 90/10 revenue requirement for two consecutive years. Furthermore, institutions that have students who receive title IV, HEA program funds to pay for non-tuition costs, such as living expenses, are already in the situation described by the commenters in which the amount of title IV, HEA program funds may exceed institutional costs. These institutions are presumably managing their 90/10 ratios using a combination of other resources, and this result would also be consistent with the GAO report.

We appreciate the suggestions made by some of the commenters that we use our authority under Experimental Sites to exempt from the 90/10 provisions institutions that would make programs more affordable. At this time, however, we are not prepared to establish experiments that could test whether exemptions from the 90/10 provisions would lead to reductions in program costs but will take the suggestion under consideration.

Changes: None.

Comments: Some commenters stated that it is unfair that the 90/10 requirements ostensibly encourage institutions to recruit students who can pay cash but the D/E rates measure would not take into account cash payments made by those students.

Discussion: We do not agree that the D/E rates measure disregards out-of-pocket payments made by students. Students who pay for some tuition costs out of pocket may have lower amounts of debt, which may be reflected in the calculation of median loan debt for the D/E rates measure.

Changes: None.

Comments: Some commenters believed that allowing G.I. Bill and military tuition assistance to be counted as non-Federal revenue creates a loophole that some for-profit institutions exploit to comply with the 90/10 requirements by using deceptive and aggressive marketing practices to enroll veterans and service members. The commenters stated that the GE regulations would help to protect veterans and service members by eliminating poorly performing programs that would otherwise waste veterans' military benefits and put them further into debt.

Discussion: Section 487(a)(24) of the HEA directs that only ''funds provided under this title [title IV] of the HEA'' are included in the 90 percent limit. 20 U.S.C. 1094(a)(24). Other Federal assistance is not included in that term. We agree that these regulations are designed and are expected to protect all students, including veterans and service members, from poorly performing programs that lead to unmanageable debt.

Changes: None.

Effect of the Affordable Care Act

Comments: Some commenters believed that the Affordable Care Act has caused some employers to limit new employees to less than 30 hours of work per week to avoid having to provide health insurance benefits. These commenters were concerned that, as a result, institutions with programs in fields where most employees are paid by the hour would be unfairly penalized for these unintended consequences of the law because students who completed their program might be unable to find full-time positions.

Discussion: Employers often change their hiring practices and wages paid to account for changes in the workforce and market demand for certain jobs and occupations. In these circumstances, we expect that institutions will make the changes needed for their programs to pass the D/E rates measure.

Changes: None.

Section 668.405 Issuing and Challenging D/E Rates

Comments: Several commenters asked the Department to clarify, and specify in the regulations, what would constitute a ''match'' with the SSA earnings data and how ''zero earnings'' are treated for the purpose of calculating the D/E rates.

Discussion: Using the information that an institution reports to the Secretary under § 668.411, the Department will create a list of students who completed a GE program during the cohort period. For every GE program, the list identifies each student by name, Social Security Number (SSN), date of birth, and the program the student completed during the cohort period. After providing an opportunity for the institution to make any corrections to the list of students, or information about those students, the Department submits the list to SSA. SSA first compares the SSN, name, and date of birth of each individual on the list with corresponding data in its SSN database, Numident. SSA uses an Enumeration Verification System to compare the SSN, name, and date of birth as listed by the Department for each individual on its list against those same data elements recorded in Numident for SSN recipients. A match occurs when the name, SSN, and date of birth of a student as stated on the Department's list is the same as a name, SSN, and date of birth recorded in Numident for an individual for whom an SSN was applied. SSA then tallies the number of individuals whose Department-supplied identifying data matches the data in Numident. The system also identifies SSNs for which a death has been recorded, which will be considered to be ''unverified SSNs'' for purposes of this calculation. Unverified SSNs will be excluded from the group of matched individuals, or ''verified SSNs,'' and therefore no earnings match will be conducted for those SSNs. If the number of verified SSNs is fewer than 10, SSA will not conduct any match against its earnings records, and will notify the Department. As noted in the NPRM, the incidence of non-matches has proven to be very small, less than two percent, and we expect that experience to continue.

If the number of verified SSNs is 10 or more, SSA will then compare those verified SSNs with earnings records in its Master Earnings File (MEF). The MEF, as explained later in this section, is an SSA database that includes earnings reported by employers to SSA, and also by self-employed individuals to the Internal Revenue Service (IRS), which are in turn relayed to SSA. SSA then totals the earnings reported for these SSNs and reports to the Department the mean and median earnings for that group of students, the number of verified individuals and the number of unverified individuals in the group, the number of instances of zero earnings for the group, and the earnings year for which data is provided. SSA does not provide to the Department any individual earnings data or the identity of students who were or were not matched. Where SSA identifies zero earnings recorded for the earnings year for a verified individual, SSA includes that value in aggregate earnings data from which it calculates the mean and median earnings that it provide to the Department, and we use those mean and median earnings to calculate the earnings for a program. As reflected in changes to § 668.404(e), we do not issue D/E rates for a program if the number of verified matches is fewer than 30. If the number of verified matches is fewer than 30 but at least 10, we provide the

mean and medium earnings data to the institution for disclosure purposes under § 668.412.

This exchange of information with SSA and the process by which SSA matches the list of students with its records is conducted pursuant to one or more agreements with SSA. The agreements contain extensive descriptions of the activities required of the two agencies, and those terms may be modified as the agencies determine that changes may be desirable to implement the standards in these regulations. The Department engages in a variety of data matches with other agencies, including SSA, and does not include in pertinent regulations either the agreements under which these matches are conducted, or the operational details included in those agreements, and is not doing so here. The agreements are available to any requesting individual under the Freedom of Information Act, and commenters have already obtained and commented on their terms in the course of providing comments on these regulations.

Changes: We have revised § 668.405(e) to clarify that the Secretary does not calculate D/E rates if the SSA earnings data returned to the Department includes reports for records of earnings on fewer than 30 students.

Comments: Several commenters criticized the Department's reliance on SSA earnings data in calculating the earnings of students who complete a GE program on several grounds. The commenters contended that SSA data are not a reliable source for earnings because the SSA database from which earnings data will be derived—the MEF—does not contain earnings of those State and local government employees who are employed by entities that do not have coverage agreements with SSA.

Discussion: We think there may be some confusion regarding the data contained in the SSA MEF and used by SSA to compute the aggregate mean and median earnings data provided to the Department and used by the Department to calculate D/E rates, and in particular the reporting and retention of earnings of public employees. As explained by SSA: [144]

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) imposed mandatory Medicare-only coverage on State and Local employees. All employees, with certain exceptions, hired after March 31 1986, are covered for Medicare under section 210(p) of the Act (Medicare Qualified Government Employment). Employees covered for Social Security under a Section 218 Agreement have Medicare coverage as a part of Social Security, therefore they are excluded from mandatory Medicare. However, COBRA 85 also contained a provision allowing States to obtain Medicare-only coverage for employees hired before April 1, 1986 who are not covered under an Agreement. Authority for Medicare-only tax administration was placed in the Code [26 U.S.C. 3121(u)(2)(C)] as the responsibility of IRS.

Regardless of whether State and local government employees participate in a State retirement system or are covered or not covered by Section 218, all earnings of public employees are included in SSA's MEF and included in the aggregate earnings data set provided to the Department. In addition, earnings from military members are included in the MEF.

Changes: None.

Comments: Commenters contended that the earnings in the MEF are understated because the amount recorded in the MEF is capped at a set figure ($113,700 in 2013), and that earnings accurately reported but exceeding that amount are disregarded and not included in the aggregate earnings data set provided to the Department by SSA.

Discussion: The commenter is incorrect. Total earnings are included in MEF records without limitation to capped earnings. As explained in greater detail below, SSA uses total earnings for the matched individuals to create the aggregate data set provided to the Department.

Changes: None.

Comments: Commenters contended that other earnings are not reported to SSA and retained in the MEF, including deferred compensation. Commenters claimed that aggregate earnings does not include earnings contributed to dependent care or health savings accounts, and therefore aggregate earnings data reported by SSA to the Department understate the earnings of students who completed programs. Commenters also asserted that reported earnings would not include such compensation as deductions for deferred earnings and 401(k) plans and similarly understate earnings. Commenters stated that an individual's SSA earnings do not include sources of income such as lottery winnings, child support payments, or spousal income.

Discussion: Other earnings of the wage earner, such as deferred compensation, must be reported, are included in the MEF, and are used to create the aggregate earnings data set provided by SSA to the Department. Not all earnings are included as earnings reported to SSA. However, reported earnings include those earnings reported under the following codes on the W2 form:

Box D: Elective deferrals to a section 401(k) cash or deferred arrangement plan (including a SIMPLE 401(k) arrangement);

Box E: Elective deferrals under a section 403(b) salary reduction agreement;

Box F: Elective deferrals under a section 408(k)(6) salary reduction SEP;

Box G: Elective deferrals and employer contributions (including nonelective deferrals) to a section 457(b) deferred compensation plan;

Box H: Elective deferrals to a section 501(c)(18)(D) tax-exempt organization or organization plan; and

Box W: Employer contributions (including employee contributions through a cafeteria plan) to an employee's health savings account (HSA).[145]

Institutions that contend that the omission of earnings not included in those that must be reported to IRS and SSA significantly and adversely affects their D/E rate can make use of alternate earnings appeals to capture that earnings data. The commenters are correct that lottery winnings, child support, and spousal income are not included in the aggregate earnings calculation prepared by SSA for the Department. Funds from those sources do not constitute evidence of earnings of the individual recipient, and their exclusion from aggregate earnings is appropriate.

Changes: None.

Comments: A commenter contended that our process for gathering earnings data disregards actual earnings, unless the wage earner has earnings subject to the Federal Insurance Contribution Act (FICA). The commenter cites a response from SSA to an inquiry posed by the commenter, in which SSA advised that SSA would record earnings for an individual only if those earnings, or other earnings reported for the same individual, were subject to FICA. The commenter contended that aggregate earnings data provided to us by SSA would therefore erroneously treat that individual as having no earnings at all. Because the commenter contended that earnings of public employees in States that do not have section 218 agreements with SSA are not subject to FICA, and are excluded from the MEF, the commenter contended that this results in zero earnings in MEF records of many public employees, and incorrect wage data being provided in the aggregate

[144] Introduction To State And Local Coverage And Section 218, available at *www.ssa.gov/section218training/basic_course_4.htm#8.*

[145] Office of Data Exchange and Policy Publications, SSA; see 2014 General Instructions for Forms W–2 and W–3, Department of Treasury, Internal Revenue Service, December 17, 2013, available at *www.irs.gov/pub/irs-pdf/iw2w3.pdf.*

earnings data SSA provides to the Department.

Discussion: As previously explained, all public employers are now subject to Medicare, and their earnings are now reported to SSA, included in SSA's MEF, and included by SSA in calculating the aggregate earnings data provided to the Department.

Instances in which an individual may have zero amounts in one or more fields reported to IRS, SSA, or both are handled as follows:

Self-Employment Data

IRS sends SSA Self-Employment data. IRS does not send Self Employment records with *all* zero money fields. SSA posts the information that is received from IRS to the MEF.

The only time the Social Security Self-Employment Income field is zero on the file received from IRS is when the taxpayer has W–2 earnings at the Social Security maximum. In this case the Total Net Earnings from Self-Employment is reported in the Self-Employment Medicare Income field on the file received from IRS.

W–2 Data

If a form W–2 has a *nonzero* value in *any* of the following money fields (and the employee name matches SSA's records for the SSN) SSA posts the nonzero amount(s) to the MEF:

Box 1—Wages, tips, other compensation
Box 3—Social Security Wages
Box 5—Medicare wages and tips
Box 7—Social Security tips
Box 11—Nonqualified plans
Box 12 code D—Elective deferrals to a section 401(k) cash or deferred arrangement
Box 12 code E—Elective deferrals under a section 403(b) salary reduction arrangement
Box 12 code F—Elective deferrals under a section 408(k)(6) salary reduction SEP
Box 12 code G—Elective deferrals and employer contributions (including non-elective deferrals) to a section 457(b) deferred compensation plan
Box 12 code H—Elective deferrals to a section 501(c)(18)(D) tax-exempt organization plan
Box 12 code W—Employer contributions to your Health Savings Account

If a W–2 has zeroes in *all* of the above money fields SSA still processes the W–2 for IRS purposes, but does not post the W–2 to the MEF.

In creating the file to send for the Dept. of Education Data Exchange:

(1) If any of the following W–2 Boxes are greater than zero:

- Box 3 (Social Security wages)
- Box 5 (Medicare wages and tips)
- Box 7 (Social Security tips),

the data exchange summary amount includes *the greater of the following:*

- The sum of Box 3 (Social Security wages) and Box 7 (Social Security tips), or
- Box 5 (Medicare wages and tips).

(2) If:

- Boxes 3, 5, and 7 are all zero, and
- Box 1 (Wages, tips and other compensation) is greater than zero,

the data exchange summary amount includes Box 1 (Wages, tips and other compensation).

(3) In addition to the above, the data exchange summary amount also includes:

- W–2 Box 11 (Nonqualified plans) and
- W–2 Box 12 codes:
  - D (Elective deferrals to a section 401(k) cash or deferred arrangement)
  - E (Elective deferrals under a section 403(b) salary reduction arrangement)
  - F (Elective deferrals under a section 408(k)(6) salary reduction SEP)
  - G (Elective deferrals and employer contributions (including non-elective deferrals) to a section 457(b) deferred compensation plan)
  - H (Elective deferrals to a section 501(c)(18)(D) tax-exempt organization plan)
  - W (Employer contributions to your Health Savings Account)
- For SE the data exchange summary amount includes the amount of Self-Employment income as determined by IRS.
- Earnings adjustments that were created from a variety of IRS and SSA sources.[146]

Changes: None.

Comments: One commenter challenged the sufficiency of the SSA MEF data on the ground that many professionals—such as graduates of medical and veterinary schools and perhaps other professional programs—work through subchapter S corporations which do not report earnings through Schedule SE. The commenters stated that the earnings of these individuals would not be included in the MEF. A commenter was concerned that such professionals receive distributions as well as payments labeled compensation, and income for such individuals as captured in SSA data would not reflect the amount earned that was characterized as distributions rather than as salaries.

Discussion: According to IRS guidance, a payment made by a subchapter S corporation for the performance of services is generally considered wages. This is the case regardless of whether the person receiving the payment for the performance of services is an officer or shareholder of a subchapter S corporation.[147] Accordingly, these payments are required to be reported by the subchapter S corporation employer on a Form W–2 filed with the SSA and, therefore, are included in SSA's MEF.

Changes: None.

Comments: One commenter stated that SSA data do not include earnings information for graduates who secure employment between the end of the calendar year for which earnings are measured and the start of the next award year, nor do the data include a methodology for annualizing earnings of borrowers who secure employment toward the end of the calendar year for which earnings are being measured.

Discussion: In order to measure earnings, one must select a time period for which earnings are counted. Any earnings measurement period, therefore, must include some earnings and exclude others. The objection posed by the commenter is not solved by modifying the earnings measurement period, because any modification would necessarily exclude some other earnings. If students who complete a program have no earnings for some part of the earnings measurement year selected, we see no reason why that period of unemployment should be disregarded in gathering the earnings data used to assess programs under the D/E rates measure. This exercise is not only impracticable, but we believe contrary to the objective of the assessment, which is to take into account periods of unemployment in assessing the outcomes for a GE program. Annualizing earnings—attributing to a student earnings that the individual did not actually receive or otherwise ignoring periods of unemployment—would contravene the Department's goal to assess the actual outcomes of students who complete a GE program.

Changes: None.

Comments: A commenter objected that § 668.405(c) improperly imposed on the institution the burden of identifying those students completing a program who can be excluded under § 688.404(e), although the institution would have limited information available to contest their inclusion.

Discussion: The objection misstates the process the Department will follow. Section 668.405(b)(1)(ii) states that the

[146] Office of Data Exchange and Policy Publications, SSA.

[147] Internal Revenue Service, Wage Compensation for S Corporation Officers, FS–2008–25, August 2008, available at *www.irs.gov/uac/Wage-Compensation-for-S-Corporation-Officers.*

Department compiles and sends to the institution the list of students who completed a program during the cohort period to be assessed, and indicates on that list those students whom the Department considers likely to qualify for exclusion. The institution is free to contend that any of those individuals should be removed for any reason, including qualifying for exclusion under § 668.404(e); that an individual designated to be excluded from the list should be included; and that an individual not on the list should be included. The institution has access to NSLDS to gather information relevant to the challenges, and can use information gathered directly from students completing the program and its own records to support a challenge. We note that the assessment occurs at the end of an institutional cohort default rate period, during which an institution is expected to maintain sufficient contact with all of its former students so that it can assist those who may not be meeting their loan repayment obligations. Using those contacts to gather relevant information on those who may qualify for exclusion poses little added burden on the institution.

Changes: None.

Comments: Some commenters contended that using SSA earnings data contravenes the stated objective of the regulations because SSA earnings data capture all earnings regardless of whether the earnings were in an occupation related to the training provided by the program.

Discussion: While we appreciate the commenter's interest in understanding whether the earnings of students who have completed a program are linked with the training provided by their respective programs, the Department has no way of obtaining this information because SSA cannot disclose the kind of individual tax return data that would identify even the employer who reported the earnings, much less the occupation for which the wages were paid. The regulations are built on the inference that earnings in the period measured are reasonably considered to be the product of the quality of the GE program that the wage earner completed. The training is presumed to prepare an individual for gainful employment in a specific occupation, but it is not unreasonable to attribute gainful employment achieved in a different occupation so shortly after completion of a GE program to be the product of that training. Although there is no practical way to directly connect a particular GE program with earnings achieved relatively soon after completion, the inference that the earnings are the outcome of the training is sufficiently compelling that we do not consider further efforts, even if data were available, to be warranted.

Changes: None.

Comments: Commenters also criticized the Department's proposal to use SSA data because SSA assigns (''imputes'') zero earnings to all those individuals for whom it does not receive an earnings report that correctly identifies the wage earner and correctly lists the individual's SSN. The commenters said that earnings reported for these individuals are placed in a suspense file. The commenters cited various reports critiquing the adequacy of efforts to eliminate these mistakes and stated that the scale of these errors suggests that a significant amount of actual earnings would be disregarded because of mistakes by employers on earnings reports.

Discussion: We acknowledge that some earnings are reported but cannot be associated with individuals whose accounts are included in the MEF database, but do not consider the magnitude of the omitted earnings to vitiate the general accuracy of the earnings data contained in the MEF.[148] The HHS OIG report to which the commenter refers regarding these mismatches cites the employment of unauthorized non-citizens as a major cause of mismatches.[149] Unauthorized non-citizens are not eligible for Federal student financial assistance, and the Department routinely scrutinizes applicants' immigration status to reduce the likelihood that such individuals will receive title IV, HEA program funds. *See* 20 U.S.C. 1091(g). Institutions themselves are in a position to identify instances in which unauthorized non-citizens may seek aid. While we recognize that mismatching of earnings occurs, we believe that these restrictions on student eligibility reduce the likelihood that mismatches will affect the accuracy of the MEF earnings data on the population of students who have enrolled in GE programs and whose earnings data are provided to the Department by SSA.

In addition, we believe that the frequency and amount of mismatched earnings are decreasing. SSA moves reported earnings into the suspense file when the individual's name and SSN combination do not match against SSA's Numident file. The suspense file does grow over the years; however, SSA performs numerous reinstate processes throughout the tax year that matches previously unmatched records to record the earnings on the proper record. These efforts have resulted in a substantial decrease in the outstanding amounts in the suspense file over the most recent five years for which complete data are available from SSA, as indicated by the following chart.[150]

	Earnings suspense file	Number of mismatched W–2 reports
2007	$90,696,742,837.94	10,842,269
2008	87,571,814,470.22	9,580,201
2009	73,380,014,667.81	7,811,295
2010	70,650,921,709.94	7,356,265
2011	70,122,804,272.37	7,128,598

Changes: None.

Comments: Commenters criticized what they described as an assumption of ''zero earnings'' by SSA for individuals included in the MEF, and contended that this practice suggests that the aggregate earnings data provided by SSA to the Department is not accurate. Commenters further noted that available data indicate that the percentage of zero earnings reported in the 2011 and 2012 GE informational rates showed what the commenters considered to be an unacceptably high percentage of instances of reports of zero earnings, ranging from nine percent for earnings data obtained in July 2013 to as much as 12.5 percent for earnings data obtained in December 2013.

Discussion: There is only one situation in which SSA assumes that an individual has zero earnings. For wage earners with earnings reported for employment type ''Household,'' the so-called ''nanny tax'' edit in employer balancing changes to zero the amounts of earnings for Social Security and Medicare covered earnings that fall below the yearly covered minimum amount. If the earnings reported by the

[148] ''Approximately 90 percent of the wage reports received by SSA each year are posted to the MEF without difficulty. After the computerized routines are applied, approximately 96 percent of wage items are successfully posted to the MEF (GAO 2005).'' Anya Olsen and Russell Hudson. ''Social Security Administration's Master Earnings File: Background Information.'' Social Security Bulletin, Vol. 69, No. 3, 2009, *www.ssa.gov/policy/docs/ssb/v69n3/v69n3p29.html.*

[149] ''In previous reports, SSA acknowledged that unauthorized noncitizens' intentional misuse of SSNs has been a major contributor to the ESF's growth.'' *Employers Who Report Wages with Significant Errors in the Employee Name and SSN (A–08–12–13036),* Office of Inspector General, Department of Health and Human Services, at 4.

[150] Source: internal programming statistics, SSA, Office of Deputy Commissioner for Systems; see also Johnson, M., *Growth of the Social Security Earnings Suspense File Points to the Rising Potential Cost of Unauthorized Work To Social Security,* The Senior Citizens League, Feb. 2013, table 2, available at *http://seniorsleague.org/2013/growth-of-the-social-security-earnings-suspense-file-points-to-the-rising-potential-cost-of-unauthorized-work-to-social-security-2/.*

employer for such an individual is successfully processed, SSA posts the earnings to the MEF as zero. SSA plans to discontinue this practice next year and will reject the report and have the employer make the correction. These amounts are so low (for 2014, this amount affects only annual earnings less than $1,900) that it is implausible to contend that these assumptions affect the accuracy of the aggregate earnings data provided by SSA to the Department.[151]

The Department has secured aggregate earnings data from SSA in five instances, as shown in the table below.[152]

	Date received from SSA	Number ED sent to SSA	Number SSA verified	Number SSA did not verify	Number with earnings	Number with Zero earnings
2011 GE informational rates—includes non-Title IV.	3/5/12	811,718	797,070	14,708	699,024	98,046 [12.3% of verified].
2012 GE informational rates for reg neg Title IV only.	7/18/13	255,168	252,328	2,845	232,006	20,317 [7.96% of verified].
2012 GE post reg neg—Title IV only.	8/14/13	923,399	917,912	8,487	798,952	115,960 [12.6% of verified].
For College Scorecard—Title IV only derived from ED data on borrowers in FY 2007 iCDR cohort for selected institutions of higher education.	9/13/13	900,419 901,719 902,380 921,749	892,796 894,260 892,840 909,613	7,623 7,459 9,540 12,136	809,204 819,542 787,223 772,574	83,592 74,718 105,617 137,039.
Totals		3,626,267	3,589,509	36,758	3,188,543	400,966 [11.1% of verified].
For College Scorecard—Title IV only derived from ED data on borrowers in FY 2008 iCDR cohort for selected institutions of higher education.	12/13/13	969,145 985,742 490,305	954,728 970,742 480,421	14,417 15,000 9,884	857,539 865,060 411,917	97,189 105,682 68,504.
Totals		2,445,192	2,405,891	39,301	2,134,516	271,375 [11.3% of verified].
Grand Totals		8,061,744	7,959,705	102,099	7,053,041	906,664 [11.4% of verified].

The commenter asserts that on average, the percentage of verified (matched) individuals who were reported as having zero earnings was 12 percent; in fact, the average was 11.4 percent. We note that the universes of individuals on which SSA provided aggregate earnings data were different: the GE earnings data was obtained for individuals who completed a GE program; the Scorecard data was obtained on all FFEL and Direct Loan borrowers who entered repayment in fiscal years 2007 and 2008, respectively, regardless of the institution or type of program in which they had enrolled, and therefore including borrowers who had been enrolled in GE programs and those who had been enrolled in other programs. Nevertheless, the incidence of zero earnings is similar for both groups.

We note that the 2011 GE informational rates were based on earnings for calendar year 2010; the annual unemployment rate for calendar year 2010 was 9.6 percent.[153] Those counted as ''unemployed'' in the published rate do not account for all those who are in fact not employed and earned no reported income; BLS includes as unemployed only those who ''do not have a job, have actively looked for work in the prior 4 weeks, and are currently available for work.'' [154] Those not included in this group can reasonably be expected to include those students included in a program's D/E rates calculation who not only do not have a job, but have ceased actively looking for work in the prior month. For this group of students, the SSA data showed zero earnings for 8 percent of the verified individuals included in the rate calculation. Unemployment rates for 2010 for two age groups likely to include most students were higher: For the group ages 20–24, the annual unemployment rate for 2010 was 18.8 percent, and for the group ages 25–34, the annual unemployment rate for 2010 was 10.8 percent.[155] As at least one commenter observed, these results are consistent with high unemployment rates.[156]

The 2012 GE informational rates the Department disseminated after the negotiation sessions were based on students' earnings in calendar year 2011, for which the annual unemployment rate was 8.9 percent, and the annual unemployment rate was

[151] Household Employer's Tax Guide, IRS Publication 926, available at *www.irs.gov/publications/p926/ar02.html#en_US_2014_publink100086732*.

[152] Source: ED records from response files received from SSA as refined based on additional SSA explanations of its exclusion from verified individuals of those verified individuals whose records show an indication that the wage earner died. Where an exchange consisted of multiple component data sets, each has been listed separately and then totaled. Data on all but the first of these exchanges was provided to the commenter pursuant to a FOIA request.

[153] BLS, *Databases, Tables & Calculators by Subject,* available at *http://data.bls.gov/timeseries/LNU04000000?years_option=all_years&periods_option=specific_periods&periods=Annual+Data*.

[154] BLS, Labor Force Statistics from the Current Population Survey, Frequently Asked Questions, available at *www.bls.gov/cps/faq.htm#Ques5*.

[155] NCES, *Unemployment rates of persons 16 to 64 years old, by age group and educational attainment: Selected years, 1975 through 2013* (derived from BLS, Office of Employment and Unemployment Statistics, unpublished annual average data from the Current Population Survey (CPS), selected years, 1975 through 2013), available at *http://nces.ed.gov/programs/digest/d13/tables/dt13_501.80.asp*.

For the purposes of this report:

The unemployment rate is the percentage of persons in the civilian labor force who are not working and who made specific efforts to find employment sometime during the prior 4 weeks. The civilian labor force consists of all civilians who are employed or seeking employment.

[156] Mark Kantrowitz, *Student Aid Policy Analysis—Analysis of FY2011 Gainful Employment Data,* July 13, 2012, available at *www.finaid.org/educators/20120713gainfulemploymentdata.pdf*.

18.1 percent for individuals in the 20–24 age group and 10 percent for individuals in the 25–34 age group. The SSA data for this group of students in GE programs included a 12.6 percent incidence of zero earnings.

In light of the unemployment rates reported for 2010 and 2011, and particularly the rates for the two age groups that likely include the great majority of students completing a GE program, the incidence of zero earnings in the SSA records is neither unexpected nor of such a magnitude with regard to the number of wage earners as to demonstrate that the SSA MEF database is unreliable as a data source for determining D/E rates.[157]

Changes: None.

Comments: Commenters asserted that by considering all zero earnings data to evidence no earnings for an individual, the Department treats each such individual as having no earnings during that year, although the individual may in fact have significant but misreported earnings. The commenters cited as a significant example of such earnings omissions the earnings of public employees whom the commenters consider as good examples of individuals with significant earnings, but whose SSA earnings would show zero earnings. The commenters criticized this as producing a bias that understates earnings. The commenters contended that the D/E rates should be adjusted, based on assumptions that the missing earnings are actually distributed throughout a program's cohort of earners. The commenters asserted that if earnings of failing GE programs were to be adjusted on that assumption, 19 percent of programs that failed the annual earnings rate would pass that threshold, and 9 percent of programs that failed the discretionary income rate would pass that threshold.

Discussion: As explained earlier, the commenter's assertion that the earnings of public employees are often, even typically, not reported to SSA is not correct. The earnings of public employees are reported to SSA, public employees are not ''deemed'' by SSA to have ''zero earnings,'' and SSA includes actual earnings reported for public employees in the aggregate earnings data SSA provides to the Department. Accordingly, it is not reasonable to conclude that public employees with actual earnings account for any appreciable number of ''zero earnings'' records.

The commenters argue that in those instances in which actual earnings are missing from the MEF, those missing wages include earnings in amounts spread throughout the cohort of students who completed a program. Thus, the commenters contend, our practice that considers all instances of ''zero earnings'' to be evidence that the individual in fact had no earnings during that year causes the earnings for the cohort to be significantly understated. Some ''zero earnings'' records result from misreported earnings or unreported earnings. However, other individuals will in fact have zero earnings, and the contention that the missing earnings belong to individuals with significant earnings appears to rest in large part on the misconception that earnings of public employees are not included in MEF, and thus appear as ''zero earnings.''

We recognize that misreported and underreported earnings can have some effect on the earnings data we use, but those same issues would affect any alternative data source that might be available. The commenters suggest no practicable alternative that would eliminate these issues and provide more reliable data sufficient to accomplish our objective here—determining earnings of individuals who completed a particular GE program offered by a particular institution. We note that an institution that believes that incidents of mismatches significantly and adversely affect SSA aggregate earnings data for the students completing a program may appeal its zone or failing D/E rates by submitting an alternate earnings appeal based on State earnings database records or a survey.

Changes: None.

Comments: Commenters contended that the Department's earnings assessment process is flawed with regard to information on self-employed individuals because the source of data on their earnings is the individual, who may fail to report or significantly underreport earnings, or who may have relatively significant business expenses that offset even substantial income. According to the commenters, barbering, cosmetology, food service, and Web design are examples of occupations in which significant numbers of individuals are self-employed and tend to underreport earnings, particularly earnings from tips, which a commenter states account for about half of earnings in service occupations such as cosmetology. Another commenter believed that employers may often fail to report payments to independent contractors whom they have retained for relatively short periods, which would further depress the amount of earnings shown for the contractors in SSA records. One commenter provided an alternate analysis that imputes certain values derived from the CPS conducted by the Census Bureau on behalf of BLS. The commenter proposed to adjust the calculation of D/E rates to take into account what the commenter considered bias in the income data reported to SSA for workers in several occupations that the CPS shows involve both significant tip income and a high percentage of income from self-employment. The commenter contended that these adjustments would significantly augment the SSA aggregate earnings reported for these occupations, increasing the median earnings by 19 percent and the mean earnings by 24 percent.

Discussion: We do not agree that our reliance on reported earnings is flawed because of its treatment of self-employment earnings and tips, or that the suggested methods for remedying the claimed flaws would be effective in achieving the goals of these regulations, for several reasons. We acknowledge that some self-employed individuals may fail to report, or underreport, their earnings. However, section 6017 requires self-employed individuals to file a return if the individual earns $400 or more for the taxable year. 26 U.S.C. 6017. Underreporting subjects the individual to penalty or criminal prosecution. See, e.g., 26 U.S.C. 6662, 7201 et seq.

Some self-employed individuals have significant income but substantial and offsetting business expenses, such as travel expenses and insurance, but our acceptance of net reported earnings for these individuals is not unreasonable. These individuals must use available earnings to pay their personal expenses including repaying their student loan debt. The fact that an individual used some revenue to pay business expenses does not support an inference that the individual had those same funds actually available to pay student loan debt.

With respect to the earnings of workers who regularly receive tips for their services, section 6107 of the Code requires individuals to report to IRS their tip earnings for any month in which those tips exceeded $20, and

[157] The duration of unemployment for those unemployed during 2010 and 2011 grew as well: 15.3 percent of those unemployed who found work during 2010, and 13.8 percent of the unemployed who found work during 2011, had been unemployed for 27 to 52 weeks [; in addition, of those unemployed who found work during 2010, 11 percent had been unemployed for a year or more, and of those reemployed during 2011, 12.9 percent had been unemployed for a year or more. Ilg, Randy E., and Theodossiou, Eleni, *Job search of the unemployed by duration of unemployment,* Monthly Labor Review, March 2012, available at *www.bls.gov/opub/mlr/2012/03/art3full.pdf.*

individuals who fail to do so are subject to penalties. 26 U.S.C. 6107, 6652(b).[158]

As to the concern that some businesses may fail to report payments to contractors, the individual contractor remains responsible for reporting those payments as with other self-employment earnings, whether or not the payments were reported by the party that engaged the individual.

Imputing some percentage of added earnings to account for underreported tips and other compensation could only be done by generalizations drawn from some source of data on earnings, but none has been suggested that would permit doing so in a way that would distinguish between programs.

To assess the bias that the commenter asserted arises from what the commenter calls ''imputing'' zero earnings to individuals with no reported earnings in the MEF, the commenter relies on earnings data from the CPS, which is derived from surveys of households. The survey samples data on a selection of all households, and relies on earnings data as provided by the individuals included in the survey. As the commenter noted, there are no data in the CPS that allow one to associate a particular respondent with a particular GE program.

Unlike the approach taken in these regulations, which captures all earnings of the cohort of students completing a program and credits those earnings to the program completed by the wage earners, the analysis proposed by the commenter does the reverse: It extrapolates from earnings reported by those survey recipients who identify their occupation as one that appears related to GE programs of that general type, and then projects an increase in aggregate earnings for all GE programs in the category of programs that appears to include that occupation. In fact, even if the respondents were all currently employed in occupations for which a category of GE programs trains students, the respondents' earnings will almost certainly have no connection with a particular GE programs we are assessing. Because any inference drawn from CPS respondents' earnings could only benefit a whole category of programs—improving the D/E rates for every program in that category—using such inferences would mask poorer performing programs and thwart a major purpose of the GE assessment.

In addition, by the time the survey is conducted, the respondent can be expected to identify his or her current or most recent job, which may be different than the occupation for which training was received years before in a GE program. Thus, to draw a usable inference about D/E earnings from data gathered in the CPS one must connect a particular GE program now being offered and evaluated with earnings and occupations disclosed by the CPS respondents years, even decades, into their careers, during which they may have worked in different kinds of occupations.

For these reasons, we do not agree with the commenters' assertion that aggregate earnings data provided by SSA from MEF are unreliable with respect to workers in occupations that involve significant tip income or a high percentage of income from self-employment. More importantly, the critique fails to demonstrate either that a different and more reliable source of earnings data is available and should reasonably be used instead of the SSA data, or that adjustments must be made based on CPS data. Moreover, the regulations allow an institution to submit an alternate earnings appeal using State databases or a survey.

Changes: None.

Comments: For the various reasons stated in the comments summarized here, commenters contended that the SSA MEF data is not the ''most reliable data available'' for the Department to use in calculating D/E rates for GE programs, and does not ''produce figures that can be considered sufficiently accurate.'' They asserted that the Department has not met its obligation to use the ''best available data'' to calculate the D/E rates.

Discussion: The commenter's argument that the Department failed to use the ''most reliable data available'' is based on cases in which parties claimed that an agency chose to rely on incomplete or outdated data at the time it made a determination, rather than more accurate data available to the agency at that time. In the relevant cases, the court considered whether the agency reasonably relied on the data available to the agency at the time of determination.[159] An agency may not disregard data actually available to it, as where, for example, data are available from a component of the same agency as the component of that agency that makes the determination. The data required to calculate the earnings component of the D/E rates is not available within components of the Department.

Similarly, an agency may not ignore or fail to seek data actually held by an agency with which it has a ''close working relationship.'' *See Baystate,* 545 F.Supp.2d at 44–45. SSA and the Department have a close working relationship, and the Department has, in fact, sought and obtained the relevant data available from SSA. The commenter does not identify any source other than SSA for the aggregate earnings data needed to calculate D/E rates. Rather, the commenter focuses on the lack of better data from SSA. We have confirmed with SSA that it does not have better data available to share with the Department, and, therefore, the Department uses the best data available from SSA to calculate earnings. Accordingly, the Department has satisfied the requirement to use the most reliable data available.

The case law establishing the requirement that an agency use the best available data does not require that the data be free from errors. The case law ''amply supports the proposition that the best available data standard leaves room for error, so long as more data did not exist at the time of the agency decision.'' *Baystate,* 545 F.Supp.2d at 49. As discussed, the commenter does not identify, and the Department is not aware of, any other source of earnings data available to the Department to calculate D/E rates for a GE program. As we recognize that there are shortcomings in the D/E rates data-gathering process, we provide for a process under § 668.405(c) for institutional corrections to the information submitted to SSA, and, to address any perceived flaws in the SSA aggregate earnings data, in § 668.406, we provide institutions an opportunity to appeal their final D/E rates using alternate earnings data obtained from a

[158] IRS Guidance, Reporting Tip Income-Restaurant Tax Tips, available at *www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Reporting-Tip-Income-Restaurant-Tax-Tips* (''Tips your employees receive from customers are generally subject to withholding. Employees are required to claim all tip income received. This includes tips you paid over to the employee for charge customers and tips the employee received directly from customers . . . Employees must report tip income on Form 4070, Employee's Report of Tips to Employer, (PDF) or on a similar statement. This report is due on the 10th day of the month after the month the tips are received . . . No report is required from an employee for months when tips are less than $20.'').

[159] *See Baystate Medical Center* v. *Leavitt,* 545 F.Supp.2d 20 (D.D.C. 2008), on which the commenter chiefly relies, describes the ''repeated recognition in case law that the agency must use 'the most reliable data available' to produce figures that can be considered sufficiently 'accurate.' '' *Baystate,* 545 F.Supp.2d at 41 (citation omitted). The accuracy of the determination ''cannot be weighed in a vacuum, but instead must be evaluated by reference to the data that was available to the agency at the relevant time.'' *Id.* An agency that used the most reliable data available in making a determination need not ''recalculate'' based on ''subsequently corrected data'' or where, for instance, ''the data failed to account for part-time workers.'' *Id.* (internal citations omitted).

student survey or State-sponsored data system. For these reasons, by using aggregate earnings data provided by SSA from its MEF, the Department has satisfied the requirement to use the best available data.

Changes: None.

Comments: Several commenters contended that the Department's use of SSA aggregate earnings data to determine the D/E rates violates the institution's due process rights because the regulations prohibit the institution from examining and challenging the earnings data the SSA uses to calculate the mean and median earnings. The commenters argued that the regulations deprive the institution of the right to be apprised of the factual material on which the Department relies so that the institution may rebut it. Commenters further contended that appeal opportunities available under the regulations are not adequate, and that the regulations impermissibly place burdens of proof on the institution in exercising challenges available under the regulations.

Discussion: As previously explained, SSA is barred from disclosing the kind of personal data that would identify the wage earners and from disclosing their reported earnings because section 6103(a) of the Internal Revenue Code (Code) bars a Federal agency from disclosing tax return information to any third party except as expressly permitted by the Code. 26 U.S.C. 6103(a). Return information includes taxpayer identity and source or amount of income. 26 U.S.C. 6103(b)(2)(A). No provision of the Code authorizes SSA to disclose return information to the Department for the purpose of calculating earnings, and therefore we cannot obtain this information from SSA (or IRS itself).

We disagree that the limits imposed by law on SSA's release of tax return information on the students comprising a GE cohort deprives the institution of a due process right. One commenter's contention that the failure to make return information available violates the institution's right to meaningful disclosure of the data on which the Department relies is not supported by the case law. Indeed, the case law to which the commenter refers simply states that an agency must provide a party with—

> [E]nough information to understand the reasons for the agency's action. . . . Claimants cannot know *whether* a challenge to an agency's action is warranted, much less formulate an effective challenge, if they are not provided with *sufficient information to understand the basis for the agency's action.*

Kapps v. *Wing,* 404 F.3d 105, 123–24 (2d Cir. 2005) (emphasis added). Similarly another commenter cites to *Bowman Transp., Inc.* v. *Arkansas-Best Freight Sys., Inc.,* 419 U.S. 281 (1974) to support a claim that failure to provide the completers' tax return data denies the institution a right to due process, but the Court there held that—

> A party is entitled, of course, to know the issues on which decision will turn and to be apprised of the factual material on which the agency relies for decision so that he may rebut it. Indeed, the Due Process Clause forbids an agency to use evidence in a way that forecloses an opportunity to offer a contrary presentation.

Bowman Transp., Inc. v. *Arkansas-Best Freight Sys., Inc.,* 419 U.S. at 289, fn.4. The procedure we use here apprises the institution of the factual material on which we base our determination, and more importantly in no way forecloses an opportunity to offer a ''contrary presentation.''

The regulations establishing the procedure we use to calculate a program's D/E rates provide not merely an opportunity to challenge the accuracy of the list of students who completed the program and the debts attributed to the cohort, but also two separate kinds of ''contrary presentations'' regarding earnings themselves—a survey of students who completed the program and their earnings, and data on their earnings from State databases. An institution may make either or both such presentations. Under the *Mathews* v. *Eldridge* test, an agency must provide procedures that are ''tailored, in light of the decision to be made, to 'the capacities and circumstances of those who are to be heard,' . . . to insure that they are given a meaningful opportunity to present their case.'' *Mathews* v. *Eldridge,* 424 U.S. 319, 349 (1976) (citations omitted). The circumstances in which the Department determines D/E rates include several facts that bear on the fairness of the opportunity given the institution to contest the determination. First, SSA is legally barred by section 6103 of the Code from providing the Department or the institution with individualized data on the members of the program cohort. Second, SSA MEF data is the only source of data readily and generally available on a nationwide basis to obtain the earnings on these cohorts of individuals. Third, parties who report to SSA the data maintained in the MEF do so under penalty of law. Fourth, millions of taxpayers, as well as the government, rely on the SSA MEF data as an authoritative source of data that controls annually hundreds of billions of dollars in Federal payments and taxpayer entitlement to future benefits.[160] Fifth, the entities directly affected by the determinations—businesses that offer career training programs, many of which derive most of their revenue from the title IV, HEA programs—are sophisticated parties. Lastly, institutions are free to present, and have us consider, alternative proofs of earnings. As previously discussed in the context of the requirement to provide the ''best available data,'' the agency's determination ''cannot be weighed in a vacuum, but must be evaluated by reference to the data available to the agency at the relevant time.'' *Baystate,* 545 F.Supp.2d at 41. Under these circumstances, the regulations provide institutions sufficient opportunity to understand the evidence on which the Department determines D/E rates and a meaningful opportunity to contest and be heard on a challenge to that determination. No more is required.[161] And, although State earnings databases may not be readily available to some institutions because of their location or the characteristics of the data collected and stored in the database, an institution has the option of conducting a survey of its students and presenting their earnings in an alternate earnings appeal.

Changes: None.

Comments: A commenter contended that the Department's practice of treating a ''zero earnings'' instance in SSA's MEF data as no earnings for the individual is improper, contrary to the practice of other Federal and State agencies, and in violation of acceptable statistical methods. According to the commenter, the U.S. Census Bureau, BLS, the Federal Economic Statistical Advisory Committee, and the Bureau of Justice Statistics all replace zero values with imputed values derived, for example, from demographically similar persons for whom data are available.

Specifically, the commenter cited the following examples in which agencies

[160] See: SSA, *Annual benefits paid from the OASI Trust Fund, by type of benefit, calendar years 1937–2013,* available at *www.ssa.gov/oact/STATS/table4a5.html*; The Board of Trustees, Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds, *2014 Annual Report,* available at *www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/ReportsTrustFunds/downloads/tr2014.pdf.*

[161] The commenters do not challenge the regulations by contending that they could be read to bar a challenge based on actual return information were the institution able to secure such information by, for example, obtaining copies of IRS earnings records with the consent of each of the students in the cohort. This option would be highly impractical, however, and therefore we did not consider it to be viable for purposes of these regulations. We also are unaware of any comments that suggested that we adopt such an option.

impute positive values where data are missing:

The United States Census Bureau (The Federal Economic Statistical Advisory Committee) uses the following imputation methods: [162]

- Relational imputation: Infers the missing value from other characteristics on the person's record or within the household (i.e., if other members of household report race, then census will infer race based on household data).
- Longitudinal edits: Data entered based on previous entries (from past reporting periods) from the same individual or household.
- Hot Deck edits: A record with similar characteristics (race, age, sex, etc.) is a hot deck. Uses data from hot deck entries to impute missing values.

BLS [163] and the Department of Education, National Center for Education Statistics [164] also use hot deck imputation (or a similar method based on demographics).

The Bureau of Justice Statistics uses the median value of an item reported in a previous survey by other agencies in the same sample cell.

Similarly, the commenter noted that State child support enforcement agencies typically impute earnings values when calculating the amount of child support required from a parent for whom no earnings data are available. The commenter stated that the Department's failure to impute earnings values in instances in which SSA data show no earnings can be expected to result in underestimation of mean and median earnings.

Discussion: The Department recognizes that other agencies, and the Department itself, may in some circumstances impute values for missing data in various calculations. Surveys conducted to discern and evaluate economic and demographic characteristics of broad populations can and are regularly made without the need for complete values for each individual data element included in the survey or analysis. In these assessments, the objective is determining characteristics of broad groups of entities or individuals. These surveys or studies typically involve universes comprising a great number of entities or individuals, about which the survey conductor has a considerable amount of current and older data available both from the entity for which data are missing and from others in the universe. Where such data are available, the survey conductor can identify both entities that sufficiently resemble the entity for which data are missing, and what data were actually provided by that entity in the past, to allow the surveyor to impute values from the known to the unknown. Where sufficient data exist, the agency can control the effect of imputing values by limiting the extent to which values will be imputed. Whether the imputation provides precisely accurate values for those values missing in the data is irrelevant to the accuracy of the overall assessment. In calculating D/E rates for a particular program, the opposite is the case; measuring the earnings of a particular cohort of graduates of a GE program offered by a particular institution requires that the Department use data that allow it to differentiate among the outcomes of identical GE programs offered by separate institutions.[165]

Imputation of income in the context of establishing child support obligations is a completely different enterprise: income is imputed to a non-custodial parent only in an individual judicial or administrative proceeding in which the non-custodial parent is a defendant, and has failed to produce earnings evidence or is either unemployed or considered to be underemployed.[166] Imputed income is used when the court believes the parent's testimony regarding reported income is false; the evidence of the parent's income and the parent's actual income does not meet his or her demonstrated earnings; or a decrease in income is voluntary. At a minimum, income is imputed to equal the amount earned from a full-time job earning minimum wage.[167] The objective of the child support determination process is to ensure that the defendant parent is contributing to the support of the child, and not shirking that responsibility by failing to find employment or failing to maximize earnings. Thus, the parent is expected to find appropriate employment to meet this obligation, and can object by demonstrating a ''good faith reason'' why he or she cannot do so.[168] In each instance, income is imputed only on a particularized assessment of the individual and his or her circumstances.

Because of these differences in procedure and objective, child support practice offers no useful model for imputing earnings to those graduates of a GE program whose MEF records show no reported earnings. The objective of calculating the mean and median earnings for graduates of a GE program—to assess the actual outcomes of that program for a specific group of students who completed the program—is very different. The assessment assumes that those graduates enrolled and persisted in order to acquire the skills needed to find gainful employment, and had no reason—such as a desire to minimize a child support obligation—to decline gainful employment that they could otherwise achieve using the skills acquired in a GE program. Because the Department receives no data that would identify an individual whose MEF record shows no reported earnings, the Department is not able to determine whether an individual was making full use of the skills for which the individual enrolled in a GE program to acquire.

[162] *www.census.gov/cps/methodology/unreported.html*

[163] *www.bls.gov/news.release/ocwage.tn.htm*

[164] *http://nces.ed.gov/statprog/2002/glossary.asp#cross-sectional*

[165] For example, BLS uses these data to produce the occupational earnings analysis that the Department does not now consider to be a sufficiently precise measure to justify its continued use as a source of earnings for the purpose of calculating D/E rates, for the reasons already explained.

[166] ''The establishment of orders for child support enforcement cases . . . occurs through either judicial or administrative processes. . . . In 30 States, imputation is practiced if the non-custodial parent fails to provide relevant information or is currently unemployed or underemployed. Five States impute income only if the non-custodial parent fails to provide relevant information such as pay stubs, income tax returns or financial affidavits. Thirteen States impute income only if the non-custodial parent is unemployed or underemployed.

Most of the 48 States that impute income consider a combination of factors in determining the amount of income to be imputed to the non-custodial parent. Thirty-five States base imputed awards on the premise that the non-custodial parent should be able to work a minimum wage job for 40 hours per week. Fifteen of the States consider the area wage rate and 10 of the States look at the area employment rate to determine imputed income. Seventeen States consider the non-custodial parent's level of education while 14 account for disabilities hindering full employment. Thirty-five States evaluate the non-custodial parent's skills and experience and thirty-one base imputations on most recent employment, where information is available.''

Office of Inspector General, Department of Health and Human Services (2000), *State policies used to establish child support orders for low-income non-custodial parents,* at 5, 15. Available at *https://oig.hhs.gov/oei/reports/oei-05-99-00391.pdf https://oig.hhs.gov/oei/reports/oei-05-99-00391.pdf.*

[167] National Conference of State Legislatures, *Child Support Digest* (Volume 1, Number 3) *www.ncsl.org/research/military-and-veterans-affairs/child-support-digest-volume-1-number-3.aspx.*

[168] In order to impute income to a parent who has demonstrated an inability to pay the specified amount, courts must determine that the party is voluntarily unemployed or underemployed. States allow for exceptions to the general rule regarding voluntary income decreases if the party can demonstrate that the decrease was based on a ''good faith reason'' (e.g., taking a lower paying job that has greater long-term job security and potential for future earnings). National Conference of State Legislatures, *Child Support 101.2: Establishing and modifying support orders,* available at *www.NCSL.Org/research/human-services/enforcement-establishing-and-modifying-orders.aspx.*

Changes: None.

Comments: One commenter objected to the language in § 668.405(c)(1) that provides that the Secretary presumes that the list of students who completed a program and the identity information for those students is correct. The commenter was concerned that, through this presumption, the Department would limit its ability to reject an inaccurate or falsified list of students. For example, this commenter explained, an institution could falsely report that fewer than 30 students completed a program so as to avoid a D/E rates calculation under the n-size provisions of the regulations. The commenter recommended modifying § 668.405(c)(1) to state ''the Secretary may presume'' that the list is correct, in order to clarify that the presumption is at the Secretary's discretion.

Discussion: Because the list of students who completed a program is created by the Department from data reported by the institution, we presume that it is correct. We do not agree that this presumption is a limitation on the Department. Rather, it confirms that the burden of proof to demonstrate that the list is incorrect resides with the institution. The list is created using data originally reported to the Department by the institution.

We note that institutions that submit reports to the Department are subject to penalty under Federal criminal law for making a false statement in such a report. *See, e.g.,* 18 U.S.C. 1001, 20 U.S.C. 1097(a). Because the Department can take enforcement action under these statutes, the Department need not, and typically does not, include in procedural regulations explicit provisions explaining that the Department can take enforcement action when we determine that an institution has submitted untruthful statements.

Changes: None.

Comments: Many commenters objected to the proposal that earnings data could be obtained from SSA ''or another Federal agency'' because it was not transparent as to which other agency the Department may rely on to provide earnings data. The commenters objected to not being able to provide informed comment during the rulemaking process on the data source. The commenters also questioned the quality of the data that the Department would receive from another Federal agency.

Discussion: This clause was included in the proposed regulations so that, if a future change in law or policy precluded SSA from releasing earnings data, the Department would have the option to obtain this information from another Federal agency. However, in response to the commenters' concerns, we will designate any new source of earnings data through a change in regulations through the rulemaking process so that the public has an opportunity to understand any proposed change and offer comments.

Changes: The clause ''or another Federal agency'' has been removed from §§ 668.404(c)(1), 668.405(a)(3), 668.405(d), 668.413(b)(8)(i)(C), and 668.413(b)(9)(i)(C).

Comments: One commenter urged the Department to create a mechanism for institutions to monitor and evaluate the student data used to calculate the D/E rates on a continuous basis so that they can make operational adjustments to ensure that programs pass the D/E rates measure.

Discussion: There are several factors that preclude institutions from using real-time data to estimate the D/E rates for a GE program on a continuous basis. First, the Department may only request mean and median earnings for a cohort of students from SSA once per year. As a result, we would not be able to provide institutions with updated earnings information at multiple points during the year. Second, any estimate of the amount of debt a student will have incurred upon completion of a GE program would involve too many assumptions to make the estimate meaningful. For example, any estimate would have to make assumptions regarding how many loan disbursements a student received and whether and when the student completed the program. Further, the estimate would have to make assumptions as to whether a student would be excluded from the calculation for any of the reasons listed in § 668.404(e).

Changes: None.

Section 668.406 D/E Rates Alternate Earnings Appeals

Comments: We received a number of comments requesting clarification regarding the cohort of students on whom an alternate earnings appeal would be based. Although the proposed regulations provided that an appeal would be based on the annual earnings of the students who completed the program during the same cohort period that the Secretary used to calculate the final D/E rates, commenters suggested that we specify the calendar year for that period. One commenter suggested that we specify that the cohort period is the calendar year that ended during the award year for which D/E rates were calculated. Another commenter recommended that, where the most recently available earnings data from SSA are not from the most recent calendar year, institutions should be permitted to use alternate earnings data from the most recent calendar year.

Some commenters asked that we specify that the students whose earnings are under consideration are the same students on the final list submitted to SSA under § 668.405(d). In that regard, a number of commenters suggested that institutions should be able to apply the exclusions in § 668.404(e), in determining the students in the cohort period.

One commenter asked the Department to permit institutions to modify the cohort of students to increase the availability of an alternate earnings appeal. Other commenters asked the Department to permit institutions to expand the cohort period if necessary to meet the survey standards or the corresponding requirements of an appeal based on earnings information in State-sponsored data systems.

Discussion: We believe the regulations sufficiently describe the relevant period for which earnings information is required in an alternate earnings appeal. As discussed in ''Section 668.404 Calculating D/E Rates,'' because D/E rates are calculated for the award year, rather than the calendar year, and because of the timeline associated with obtaining earnings data from SSA, we state that the earnings examined for an alternate earnings appeal must be from the same calendar year for which the Department obtained earnings from SSA under § 668.405(c). The purpose of the appeal is to demonstrate that, using alternate earnings for the same cohort of students, the program would have passed the D/E rates measure. Accordingly, it would not be appropriate to use data from a year that is different from the one used in calculating the D/E rates. In ''Section 668.404 Calculating D/E Rates,'' we provide an example that illustrates how the period will be determined.

Under this approach, because an institution will know in advance the cohort of students and calendar year for earnings that will be considered as a part of an appeal, the institution can begin collecting alternate earnings data well before draft D/E rates are issued in the event that the institution believes its final D/E rates will be failing or in the zone and plans to appeal those D/E rates.

We agree that institutions should be able to exclude students who could be excluded under § 668.404(e) in their alternate earnings appeal. We recognize that in order to maximize the time that an institution has to conduct a survey or database search, the institution may elect to begin its survey or search well

before the list of students is submitted to SSA, and the exclusions from the list under § 668.404(e), are finalized.

We also agree that there may be instances where a minor adjustment to the cohort period may make available an alternate earnings appeal that would not otherwise meet the requirements of the regulations. For example, for an appeal based on earnings information in State-sponsored data systems, the information may not be collected or organized in a manner identical to the way in which earnings data are collected and organized by SSA, and a minor adjustment to the cohort period may be necessary to meet the matching requirements. In this regard, we note that an institution would not be permitted, however, to present annualized, rather than annual, earnings data in an alternate earnings appeal, even if that is how the data are maintained in a State-sponsored data system.

In accordance with instructions on the survey form, an institution may exclude from its survey students that are subsequently excluded from the SSA list. For a State data system search, the institution may exclude students that are subsequently excluded as long as it satisfies the requirements under § 668.406(d)(2). Under those requirements the institution must obtain earnings data for more than 50 percent of the students in the cohort, after exclusions, and that number of students must be 30 or more.

Changes: We have revised the provisions of § 668.406(c)(1) and (d)(1) in the final regulations (§ 668.406(a)(3)(i) and (a)(4)(i) in the proposed regulations), and added § 668.406(b)(3), to permit institutions to exclude students who are excluded from the D/E rates calculation under § 668.404(e). If the institution chooses to use an alternate earnings survey, the institution may, in accordance with the instructions on the survey form, exclude students that are excluded from the D/E rates calculation. If the institution obtains annual earnings data from one or more State-sponsored data systems, it may, in accordance with § 668.406(d)(2), exclude from the list of students submitted to the administrator of the State-administered data system students that are excluded from the D/E rates calculation. We have also included in § 668.406(d)(2) that an institution may exclude these students with respect to its appeal based on data from a State-sponsored data system.

We have also provided in § 668.406(b)(3) that an institution may base an alternate earnings appeal on the alternate earnings data for students who completed the program during a cohort period different from, but comparable to, the cohort period that the Secretary used to calculate the final D/E rates.

Comments: We received comments in support of permitting institutions in an alternate earnings appeal to include the earnings of individuals who did not receive title IV, HEA program funds for enrollment in the program and, also, a comment opposing the inclusion of those individuals. Those commenters in support argued that the earnings of students who receive title IV, HEA program funds for enrollment in a program are not representative of the earnings of all their program graduates and therefore the earnings of all individuals who complete a program should be considered on appeal. On the other hand, one commenter recommended that the basis for an alternate earnings appeal be limited to the earnings of students who received title IV, HEA program funds for enrollment to align the regulations with the district court's decision in *APSCU* v. *Duncan.*

Discussion: We agree with the commenter who recommended that the basis for an alternate earnings appeal be limited to the earnings of students who received title IV, HEA program funds for enrollment in the program. We believe this approach better serves the purpose of the alternate earnings appeal—to allow institutions, which are not permitted to challenge the accuracy of the SSA data used in the calculation of the D/E rates, to demonstrate that any 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 data system warrants revision of the final D/E rates. The purpose of the appeal is to permit institutions to present evidence that the earnings data used to calculate the D/E rates may not capture the earnings outcomes of the students on whom the D/E rates were based, rather than to present evidence of the earnings of a different set of individuals who completed the program. As the commenter noted, the approach we take here, which considers only outcomes for individuals receiving title IV, HEA program funds, also aligns the regulations with the court's interpretation of relevant law in *APSCU* v. *Duncan* that the Department could not create a student record system based on all individuals enrolled in a GE program, both those who received title IV, HEA program funds and those who did not. *See APSCU* v. *Duncan,* 930 F. Supp. 2d at 221. Further, because the primary purpose of the D/E rates measure 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 of students who receive title IV, HEA program funds, including in connection with an alternate earnings appeal of a program's D/E rates. By limiting the alternate earnings appeal to an assessment of outcomes of only students who receive title IV, HEA program funds, the Department can monitor the Federal investment in GE programs. See the NPRM and our discussion in this document in ''§ 668.401 Scope and Purpose'' for a more detailed discussion regarding the definition of ''student'' in these regulations as an individual who receives title IV, HEA program funds for enrollment in a program.

Changes: None.

Comments: A number of commenters urged the Department to permit appeals based on current BLS earnings data, either as a standing appeal option or as an option only during the transition period.

Discussion: We do not believe that BLS data reflect program-level student outcomes, which are the focus of the accountability framework in the regulations. The average or percentile earnings gathered and reported by BLS for an occupation include all earnings gathered by BLS in its survey, but do not show the specific earnings of the individuals who completed a particular GE program at an institution and, therefore, would not provide useful information about whether the program prepared students for gainful employment in that occupation. Accordingly, we decline to include an option for alternate earnings appeals that rely on BLS data.

Changes: None.

Comments: One commenter recommended that an institution should be required to deliver any student warnings and should be subject to any other consequences under § 668.410 based on a program's final D/E rates while an appeal is pending. The commenter expressed concern that suspending any such requirements and consequences until resolution of an appeal, as we provide in § 668.406(a)(5)(ii) of the proposed regulations (§ 668.406(e)(2) of the final regulations), would prevent students from receiving information that may be critical to their educational decision making. The commenter also proposed that an appeal, if successful, should not change a program's results—that is,

failing or in the zone—under the D/E rates measure, but should only preserve a program's eligibility for title IV, HEA program funds for another year.

Discussion: Although we agree that it is important for students and prospective students to receive important information about a GE program's student outcomes in a timely manner, we continue to believe that it is not appropriate to sanction an institution on the basis of D/E rates that are under administrative appeal. The purpose of the administrative appeal is to allow an institution to demonstrate that, based on alternate earnings data, a program's final D/E rates, calculated using SSA earnings data, warrant revision. To make the administrative appeal meaningful, we do not believe that institutions should be subject to the consequences of failing or zone D/E rates during the limited appeal period. We also believe it could potentially be confusing and harmful to students and prospective students to receive student warnings from an institution that is ultimately successful in its administrative appeal. We note that, under § 668.405(g)(3) and § 668.406(e)(2) of the final regulations, the Secretary may publish final D/E rates once they are issued pursuant to a notice of determination, with an annotation if those rates are under administrative appeal. Accordingly, we expect that final D/E rates will be available to inform the decision making of students and prospective students, even during an administrative appeal.

In addition, we believe that a successful appeal should result in a change in a program's final D/E rates. The purpose of the alternate earnings appeal process is to allow institutions to demonstrate that any difference between the mean or median annual earnings the Secretary obtained from SSA and the mean or median annual earnings from a survey or State-sponsored database warrants revision of the D/E rates. If an institution is able to demonstrate that, with alternate earnings data, a program would have passed the D/E rates measure, the program should have all benefits of a passing program under the regulations.

Changes: None.

Comments: Two commenters asked the Department to provide institutions a period longer than three business days after the issuance of a program's final D/E rates to give notice of intent to file an alternate earnings appeal. One commenter proposed a period of 15 days after issuance of the final D/E rates. The commenters believed that the time provided in the proposed regulations is not sufficient to complete review of a program's D/E rates.

Discussion: Section 668.406(a)(5)(i)(A) of the proposed regulations provided that, to pursue an alternate earnings appeal, an 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. In other words, although an appeal is made based on a program's final D/E rates, an institution can give notice of its intent to submit an appeal as soon as it receives draft D/E rates. Under § 668.405, a program's final D/E rates are not issued until the later of the expiration of a 45-day period in which an institution may challenge the accuracy of the loan debt information the Secretary used to calculate the median loan debt for the program and the date on which any such challenge is resolved. Accordingly, under the proposed regulations, the window during which an institution may submit notice of its intent to submit an alternate earnings appeal would not be, as suggested by the commenters, limited to the three-day period after the issuance of the final D/E rates. Rather, an institution would have, at a minimum, the 48-day period after draft D/E rates are issued. We believe that draft D/E rates provide an institution with sufficient information to determine whether to submit an alternate earnings appeal. We also believe that a 48-day minimum period to give notice of intent to submit an appeal adequately balances the Department's interests in ensuring that a program's final D/E rates are available to prospective students and students at the earliest date possible and providing institutions with a meaningful opportunity to appeal. Nonetheless, we appreciate that some institutions may not be able to give notice of intent to appeal until final D/E rates have been issued. To provide institutions with adequate time to decide whether to pursue an alternate earnings appeal, and if so, to communicate that intention, while still ensuring that the Department can promptly disclose the program's final D/E rates to the public, we are revising the regulations to provide that, as in the 2011 Prior Rule, an institution has until 14 days after final D/E rates have been issued to notify the Department of its intent to submit an appeal.

Changes: We have revised the provision in § 668.406(e)(1)(i) of the final regulations (§ 668.406(a)(5)(i)(a) of the proposed regulations), to require an institution to notify the Secretary of its intent to submit an alternate earnings appeal no later than 14 days after the Secretary issues the notice of determination.

Comments: Two commenters asked the Department to give institutions a period longer than 60 days after the issuance of a program's final D/E rates to submit the documentation required for an alternate earnings appeal. One of the commenters proposed 120 days. The commenters believed that the time provided is not sufficient to meet the requirements of an appeal.

Discussion: Under § 668.405, a program's final D/E rates are not issued until the later of the expiration of a 45-day period after draft D/E rates are issued, during which an institution may challenge the accuracy of the loan debt information used to calculate the median loan debt for the program, and the date on which any such challenge is resolved. The period available to an institution to take all steps required to submit an alternate earnings appeal is not, as suggested by some of the commenters, limited to the 60-day period after the issuance of the final D/E rates. As we note previously, draft D/E rates should provide an institution with sufficient information to determine whether it intends to submit an alternate earnings appeal. Consequently, an institution has, at a minimum, the 45-day period after draft D/E rates are issued, together with the 60 days after issuance of final D/E rates, or 105 days in total to submit the documentation required for an alternate earnings appeal.

An institution also has the option to begin its alternate earnings survey or collection of data from State-sponsored data systems well before the Secretary provides the institution with its draft D/E rates. For 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 in early 2016, approximately 13 months after the end of calendar year 2014. 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. An institution that wished to conduct a survey to support a potential alternate earnings appeal of its D/E rates for award year 2014–2015 would base its appeal on student earnings during calendar year 2014. Students who completed the GE program would know by early 2015 how much they earned in 2014, and could be surveyed, as early as the beginning of 2015—more than a full year before the Department would issue final D/E rates for award year 2014–2015.

We believe the regulations provide sufficient time to permit an institution to conduct an earnings survey or collect State earnings data and submit an alternate earnings appeal. To permit more time would further delay the receipt by students and prospective students of critical information about program outcomes and 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 program that does not meet the minimum standards of the regulations.

Changes: None.

Comments: None.

Discussion: Section 668.406(a)(3)(i) of the proposed regulations provided that NCES will develop a valid survey instrument targeted at the universe of applicable students who complete a program. We have determined that a pilot-tested universe survey, rather than a field-tested sample survey, as provided in the proposed regulations, is the appropriate vehicle to understand the appropriateness of the survey items and the order in which they are presented. While a field test implies a large-scale, nationally representative survey that is the precursor to a full-scale survey administration, and evaluates the operational aspects of a data collection as well as the survey items themselves, a pilot test is smaller and is more geared towards evaluating the survey items, rather than the operational procedures, as is more appropriate for these purposes.

Although institutions are not required to use the exact Earnings Survey Form provided by NCES, we believe that institutions should use the same survey items and should present them in the same order as presented in the Earnings Survey Form to ensure that the pilot-tested survey items are effectively implemented. We note that, as we stated in the NPRM, the NCES Earnings Survey Form will be made available for public comment before it is implemented in connection with the approval process under the Paperwork Reduction Act of 1995.

Changes: We have revised the provision in § 668.406(c)(1) of the final regulations (§ 668.406(a)(3)(i) of the proposed regulations), to specify that the Earnings Survey Form will include a pilot-tested universe survey and provide that, although an institution is not required to use the Earnings Survey Form, in conducting a survey it must adhere to the survey standards and present to the survey respondent in the same order and same manner the same survey items included in the Earnings Survey Form.

Comments: Several commenters noted that they were unable to evaluate whether the standards for alternate earnings appeals based on survey data are appropriate because the NCES Earnings Survey Form that will include the standards will not be released until a later date. These commenters also questioned the fairness and expense of requiring institutions to submit an independent auditor's report with the survey results. Another commenter suggested that a survey-based alternate earnings appeal would be too costly for small institutions.

On the other hand, one commenter argued that less rigorous survey standards would not be appropriate and recommended that the Department institute additional measures to ensure that institutions do not improperly influence survey results. Specifically, the commenter suggested that the Department conduct audits of surveys to determine if there was improper influence and require an institution's chief executive officer to include in the required certification a statement that no actions were taken to manipulate the survey results.

Discussion: We appreciate the commenters' concerns and expect that the survey standards developed by NCES will balance the need for reliable data with our intent to provide a meaningful opportunity for appeal that is economically feasible even for smaller institutions. As we stated in the NPRM, the NCES Earnings Survey Form, including the survey standards, will be made available for public comment before it is implemented as a part of the approval process under the Paperwork Reduction Act of 1995. At such time, the public will be able to comment on the standards and any associated burden.

NCES fulfills a congressional mandate to collect, collate, analyze, and report complete statistics on the condition of American education and develops statistical guidelines and standards that ensure proper fieldwork and reporting guidelines are followed. NCES standards are established through an independent process so that outside organizations can rely on these guidelines. Although the standards have not been developed for public review and comment at this time, we are confident that NCES will provide a sufficient methodology under which accurate earnings can be reported and used in calculations for appeals.

To ensure that surveys are conducted in accordance with the standards set for the NCES Earnings Form, we are requiring that institutions submit in connection with a survey-based appeal an attestation engagement report prepared by an independent auditor, certifying that the survey was conducted in accordance with those standards. We note that independent auditor certification is required by section 435(a)(5) of the HEA in a similar context—the presentation of evidence that an institution is achieving academic or placement success for low-income students as proof that an institution's failing iCDR should not result in loss of title IV, HEA program eligibility. 20 U.S.C. 1085(a)(5). Given NCES' experience in developing survey standards and this independent auditor requirement, we do not think additional audit or certification requirements are necessary.

Although use of the Earnings Survey Form is not required, we believe use of the form will streamline the process for both the institution and the party preparing the attestation engagement report.

Changes: None.

Comments: Several commenters expressed support for the option to base an alternate earnings appeal on earnings data obtained from State-sponsored databases, noting that this option would increase the likelihood that an institution may successfully appeal a program's D/E rates. One commenter suggested that this option was particularly useful for programs that prepare students for employment in industries where earnings are often underreported. However, another commenter questioned why the Department would include this appeal option given the flaws cited in the NPRM with this approach, such as the potential inaccessibility and incompleteness of these databases.

Discussion: As one commenter noted, and as described in more detail in the NPRM, we believe that there are limitations of State earnings data, notably relating to accessibility and the lack of uniformity in data collected on a State-by-State basis. However, as other commenters noted, the alternate

earnings appeal using State earnings data provides institutions with a second appeal option. This option may be useful to those institutions that already have, or may subsequently implement, processes and procedures to access State earnings data. Further, we believe that the matching requirements of the State earnings appeal option will make it more likely that the earnings data on which the appeal is based are reliable and representative of student outcomes.

Changes: None.

Comments: We received a number of comments both in support of, and opposed to, our proposal to allow an institution to submit, for a program that is failing or in the zone under the D/E rates measure, a mitigating circumstances showing regarding the level of borrowing in the program. As proposed in the NPRM, an institution would show that less than 50 percent of all individuals who completed the program during the cohort period, both those individuals who received title IV, HEA program funds and those who did not, incurred any loan debt for enrollment in the program. A GE program that could make this showing successfully would be deemed to pass the D/E rates measure.

Commenters who supported the showing of mitigating circumstances argued that programs for which fewer than 50 percent of individuals enrolled in the program incur debt pose low risk to students and taxpayers. Further, these commenters urged the Department to go beyond a showing of mitigating circumstances and exempt such programs from evaluation under the accountability metrics altogether. A subset of these commenters proposed other requirements that a program would have to meet to qualify for an up-front exemption based on borrowing levels, for example, requiring that tuition and fees are set below the maximum Pell Grant amount. The commenters argued that an up-front exemption for ''low risk'' programs would lessen the burden on institutions and the Department. These commenters stated that low-cost, open-access institutions serve high numbers of low-income students and generally have the fewest resources to meet new administratively burdensome regulations. Without up-front relief for these programs, the commenters suggested that many of these institutions would elect to close programs or cease to participate in the title IV, HEA loan programs.

Other commenters opposed the proposed showing of mitigating circumstances based on borrowing levels. These commenters argued that such a showing, or the related exemption proposed by commenters, would inappropriately favor public institutions. These commenters suggested that, although GE programs offered by public institutions may have lower rates of borrowing, such programs are not necessarily lower cost. Rather, these commenters argued, public institutions, unlike for-profit institutions, benefit from State and local subsidies and do not pay taxes. In this regard, one commenter noted that the showing of mitigating circumstances would result in inequitable treatment among public institutions in different States, where there is varying eligibility for State tuition assistance grants. Another commenter argued that cost—as reflected in a low borrowing rate—should not be the only determinative factor of program quality, as it would permit programs with low completion rates, for example, to remain eligible for title IV, HEA program funds. Other commenters contended that, particularly when only a fraction of programs offered by public institutions would fail the accountability metrics, it would be unjust to include individuals who did not receive title IV, HEA program funds for enrollment in a program in a showing of mitigating circumstances based on borrowing levels when the Department otherwise evaluates GE programs based solely on the outcomes of students who receive title IV, HEA program funds. Some commenters noted that to do so would be at odds with the legal framework established by the Department in order to align the regulations with the court's interpretation of relevant law in *APSCU* v. *Duncan,* 930 F. Supp. 2d at 221, regarding student record systems.

Discussion: As we discuss in detail in ''Section 668.401 Scope and Purpose,'' in our discussion of the definition of ''student,'' we do not believe the commenters who supported a ''low borrowing'' appeal presented a sufficient justification for us to depart from the purpose of the regulations—to evaluate the outcomes of students receiving title IV, HEA program funds and a program's continuing eligibility to receive title IV, HEA program funds based solely on those outcomes—even for the limited purpose of demonstrating that a program is ''low risk.''

We agree with the commenters who suggested that a program for which fewer than 50 percent of individuals borrow is not necessarily low risk to students and taxpayers. Because the proposed showing of mitigating circumstances would be available to large programs with many students, and therefore there may be significant title IV, HEA program funds borrowed for a program, it is not clear that the program poses less risk simply because those students, when considered together with individuals who do not receive title IV, HEA program funds, compose no more than 49 percent of all students. We also note that, if a program is indeed ''low cost'' or does not have a significant number of borrowers, it is very likely that the program will pass the D/E rates measure.

For these reasons, we do not believe there is adequate justification to depart from the accountability framework established in the proposed regulations, by permitting consideration of the outcomes of individuals other than students who receive title IV, HEA program funds for enrollment in a program in determining whether a program has passed the D/E rates measure. For the same reasons, we do not think there is justification to make an even greater departure from the regulatory framework to allow for an upfront exemption from the accountability framework based on borrowing levels.

We appreciate the commenters' concerns about administrative burden. As we discuss in more detail in ''Section 668.401 Scope and Purpose,'' in preparing these regulations, we have been mindful of the importance of minimizing administrative burden while also serving the important interests behind these regulations.

Changes: We have eliminated from § 668.406 the provisions relating to showings of mitigating circumstances.

Section 668.407 [Reserved] (Formerly § 668.407 Calculating pCDR)

Section 668.408 [Reserved] (Formerly § 668.408 Issuing and Calculating pCDR)

Subpart R

Comments: Some commenters argued that the pCDR measure should take into account only individuals who received title IV, HEA program funds because the focus of the regulations is assessing the likelihood that a program will lead to gainful employment for those students. Others objected to limiting the pCDR measure to these students, other than in a challenge or appeal based on a program's participation rate index or economically disadvantaged student population, because, according to the commenters, this would produce distorted assessments of program outcomes. These commenters argued that many of the students who receive title IV, HEA program funds are both first-time borrowers and first-generation postsecondary students, who have

historically been more likely to default than other borrowers.

Discussion: As discussed in ''Section 668.403 Gainful Employment Program Framework,'' we have eliminated the pCDR measure as an accountability metric. However, we have retained program cohort default rate as a possible item on the disclosure template. Accordingly, we do not address the commenters' concerns in the context of program eligibility. We discuss comments regarding program cohort default rates as a disclosure item in ''§ 668.412 Disclosure Requirements for GE Programs'' and ''§ 668.413 Calculating, Issuing, and Challenging Completion Rates, Withdrawal Rates, Repayment Rates, Median Loan Debt, Median Earnings, and Program Cohort Default Rates.'' Finally, as discussed in more detail in ''Section 668.401 Scope and Purpose'' and ''Section 668.412 Disclosure Requirements for GE Programs,'' the information that institutions must disclose about their programs will be based only on the outcomes of students who received title IV, HEA program funds so that students and prospective students who are eligible for title IV, HEA program funds can learn about the outcomes of other students like themselves. We believe that this information will be more useful to these students in deciding where to invest their resources, including, for certain types of title IV, HEA program funds, the limited funds that they may be eligible for, rather than information that is based partly on the outcomes of dissimilar students.

Changes: We have revised the regulations to remove pCDR as a measure for determining program eligibility. We have removed the proposed provisions of §§ 668.407 and 668.408 and reserved those sections.

Section 668.409 Final Determination of D/E Rates Measure

Comments: One commenter requested that we synchronize the timing of the D/E rates measure and pCDR measure calculations, notices of determination, and student warning requirements to reduce the complexity of compliance. The commenter proposed that the Secretary issue a single notice of determination that would include a program's results under both measures.

Discussion: As discussed in ''Section 668.403 Gainful Employment Program Framework,'' we have eliminated the pCDR measure as an accountability metric but retained program cohort default rates as a possible item on the disclosure template. Accordingly, there is no reason to synchronize the D/E rates and program cohort default rates calculations because institutions will receive notices of determination under § 668.409 with respect to the D/E rates measure only and there will be no student warning requirements tied to pCDR. The Secretary will notify institutions of the draft and official program cohort default rates of their programs, along with related information, under the procedures in § 668.413.

Changes: We have revised § 668.409 to eliminate references to the pCDR measure.

Comments: One commenter recommended that a notice of determination be issued no later than one year after the Department obtains the data necessary to determine a program's results under the D/E rates measure. The commenter stated that such a requirement would allow sufficient time for challenges and appeals.

Discussion: The Department will issue a notice of determination under § 668.409 when final D/E rates are determined under §§ 668.404 and 668.405 and, if a program's D/E rates are recalculated after a successful alternate earnings appeal, under § 668.406. It is not clear whether the commenter intended for the one-year time limit to apply to a notice of determination of final D/E rates or recalculated D/E rates. In either case, although we appreciate the concern, we do not believe that a time limit is necessary as the Department will work to issue notices of determination as quickly as possible but in some cases, resolution of an appeal may take longer than one year.

Changes: None.

Section 668.410 Consequences of the D/E Rates Measure

Comments: Commenters recommended that we eliminate the student warning requirement. They suggested that, if an institution is required to give the student a warning about a program, it would be difficult or impossible to recruit new students and current students would be encouraged to transfer into other programs or withdraw from their program. The commenters argued that, as a result, the student warning requirement effectively undermines the Department's stated policy of permitting programs time and opportunity to improve. Another commenter proposed eliminating the student warning requirement on the grounds that, as a result of the warnings, States would be burdened with ''unwarranted'' consumer complaints against institutions from students concerned that their program is about to lose title IV, HEA program eligibility.

On the other hand, some commenters supported the proposed student warning requirements.

Discussion: A student enrolled in a program that loses its title IV, HEA program eligibility because of its D/E rates faces potentially serious consequences. If the program loses eligibility before the student completes the program, the student may need to transfer to an eligible program at the same or another institution to continue to receive title IV, HEA program funds. Even if the program does not lose eligibility before the student completes the program, the student is, nonetheless, enrolled in a program that is failing or consistently resulting in poor student outcomes and could be amassing unmanageable levels of debt. Accordingly, we believe it is essential that students be warned about a program's potential loss of eligibility based on its D/E rates. The student warning will provide currently enrolled students with important information about program outcomes and the potential effect of those outcomes on the program's future eligibility for title IV, HEA program funds. This information will also help prospective students make informed decisions about where to pursue their postsecondary education. Some students who receive a warning may decide to transfer to another program or choose not to enroll in such a program. Other students may decide to continue or enroll even after being made aware of the program's poor performance. In either scenario students will have received the information needed to make an informed decision. We believe that ensuring that students have this information is necessary, even if it may be more difficult for programs that must issue student warnings to attract and retain students. Institutions may mitigate the impact of the warnings on student enrollment by offering meaningful assurances and alternatives to the students who enroll in, or remain enrolled in, a program subject to the student warning requirements.

As a result of the student warning requirements, we expect fewer students will make complaints with State consumer agencies about being misled and enrolling in a program that subsequently loses eligibility. We also believe any additional burden that might be imposed on State agencies due to an increased number of complaints is outweighed by the benefits of providing the warnings.

Changes: None.

Comments: One commenter recommended that we use data regarding GE program performance previously collected by the Department

in connection with the 2011 Prior Rule to identify high-risk programs and require those programs to issue student warnings and make other disclosures, effective upon the implementation of the regulations.

Discussion: Although we appreciate the commenter's interest in providing students with timely information, it is not feasible to implement the commenter's proposal. In the interest of fairness and due process, we have provided for a challenge and appeals process in the regulations. The 2012 GE informational D/E rates are estimated results intended to inform this rulemaking that were not subject to institutional challenges or appeals. As a result, using these results for accountability purposes would present fairness and due process concerns. In addition, we would be unable to uniformly apply the commenter's proposal because the Department does not have data for programs that were established after institutions reported information under the 2011 Prior Rule or for those programs that were in existence at that time but for which data were not reported because institutions lacked records for older cohorts, as may be the case with some medical and dental programs.

Changes: None.

Comments: One commenter suggested that an institution should not be required to deliver student warnings as a result of a failing program cohort default rate until the resolution of all related appeals.

Discussion: As discussed in ''Section 668.403 Gainful Employment Program Framework,'' we have eliminated the program cohort default rate measure as an accountability metric. Accordingly, the student warning requirements will apply only to programs that may lose eligibility based on their D/E rates for the following award year.

Changes: None.

Comments: Some commenters recommended that institutions be required to issue student warnings whenever a program fails or is in the zone under the D/E rates measure rather than just in the year before a program could become ineligible for title IV, HEA program funds, as provided in the proposed regulations. These commenters reasoned that students and prospective students should be alerted to poor program performance as early as possible.

Other commenters, however, agreed with the Department's proposal to require student warnings only if a program could become ineligible based upon its next set of final D/E rates. They argued that it would be unfair to require student warnings based on only a single year's results.

One commenter asserted that it takes a long time to build or rebuild a quality academic program because an institution must develop and maintain courses and curricula and find and retain qualified faculty. According to the commenter, requiring the student warning after one failing or zone result under the D/E rates measure would curtail enrollments, making it difficult to maintain program infrastructure and offerings and resulting in fewer GE programs available to students.

Discussion: We agree with the commenters who argued that students and prospective students should receive a warning when a program may lose eligibility in the following award year based on its D/E rates, rather than at any time the program is not passing under the D/E rates measure. We recognize that requiring an institution to provide the student warning after a program receives D/E rates that are in the zone for the first or second year may adversely affect the institution's ability to improve the program's performance. We also appreciate that a program's D/E rates may be atypical in any given year, and deferring the warning until the program receives a failing rate or a third consecutive zone rate increases the likelihood that the warning is warranted. Until such time as the warning is required, information about the program's performance under the D/E rates measure will, nonetheless, be available to students and prospective students. The Department will publish the final D/E rates, and a program's disclosure template may include the annual earnings rates, as well as a host of other critical indicators of program performance.

We recognize that some students who receive a warning about a program may decide to transfer to another program or choose not to enroll in the program. Other students may decide to continue or enroll even after being made aware of the program's poor performance. In either event, students will have the information necessary to make an informed decision. Further, as discussed in ''Section 668.403 Gainful Employment Framework,'' while some programs will be unable to improve, we believe that many will and that institutions with passing programs will expand them or establish new programs. Accordingly, we expect that most students who decide not to enroll or continue in a program will have other viable options to continue their education.

We are making a number of revisions to the proposed text of the student warning. In order to reduce complexity, we are revising § 668.410(a) to provide for a single uniform warning for both enrolled and prospective students rather than, as was the case in the proposed regulations, warnings with varying language depending on whether the student is currently enrolled or a prospective student. We are also revising the text of the single warning to make it more broadly applicable, easier to understand, and limited to statements of fact.

First, we are revising the text of the warning to reflect that students to whom the warning is provided may complete their program before a loss of eligibility occurs. Second, we are revising the text to clarify that such a loss of eligibility by the program would affect only those students enrolled at the time a loss of eligibility occurs. Third, because a program loses eligibility if it fails in two out of three consecutive years, we are revising the text of the warning to reflect that a program that has failed the D/E rates measure in one year but passed the D/E rates measure in the following year still faces loss of eligibility based on its D/E rates for the next award year.

To convey a program's status under the accountability framework to students and prospective students effectively, we are revising the text of the warning so that it is accurate for both current and prospective students, yet succinct and simply worded. We avoid, for example, any explanation as to why a program with D/E rates that are passing in the current year could nevertheless lose eligibility based on rates that are failing in the next year, or why a program that has received no failing D/E rates could lose eligibility based on rates for the next year that are in the zone for the fourth consecutive year. We therefore are revising the text of the warning to describe the current status of the program in a manner that is accurate in all circumstances in which the warning is required: that the program ''has not passed'' the standards (without identifying whether the statement refers to the current year or the immediately preceding year or years) and that loss of student aid eligibility may occur ''if the program does not pass the standards in the future.'' Finally, we are revising the text to simply describe the kind of data on which the D/E rates measure is based.

Changes: We have revised § 668.410(a) to replace the separate warnings for enrolled students and for prospective students with a single warning for both groups. We have revised the text of the warning to reflect this change and to make the warning more broadly applicable, easier to

understand, and limited to statements of fact.

Comments: One commenter contended that, for shorter programs, even if a program becomes ineligible for title IV, HEA program funds in the next year, a student may be able to complete the program without any effect on the student's ability to continue receiving financial aid. The commenter recommended that in these circumstances, institutions should not be required to give a student warning or should be permitted to revise the content of the warning.

Discussion: We agree that at the time that a student receives the student warnings, loss of access to title IV, HEA program funds will be only a possibility rather than a certain result. Accordingly, as discussed above, we have revised the text of the student warnings to state that if the program does not pass Department standards in the future, ''students who are then enrolled may'' lose access to title IV, HEA program funds to pay for the program.

Changes: As previously discussed, we have revised § 668.410(a) to clarify in the student warning that loss of eligibility may occur in the future, and students then enrolled may lose access to title IV, HEA program funds.

Comments: One commenter asserted that the student warnings in the proposed regulations incorrectly state that programs provide Federal financial aid, when it is the Department that provides title IV, HEA program funds.

Discussion: The commenter is correct that title IV, HEA program funds are not provided by a program.

Changes: We have revised the text of the student warning in § 668.410(a) to clarify that title IV, HEA program funds are provided by the Department.

Comments: One commenter recommended that, with respect to warnings to enrolled students, institutions should be required to specify the options that will be available if the program loses its eligibility for title IV, HEA program funds.

Discussion: The proposed regulations required that the warning to enrolled students must:

- Describe the options available to students to continue their education at the institution, or at another institution, in the event that the program loses eligibility for title IV, HEA program funds; and
- Indicate whether the institution will allow students to transfer to another program at the institution; continue to provide instruction in the program to allow students to complete the program; and refund the tuition, fees, and other required charges paid to the institution by, or on behalf of, students for enrollment in the program.

We are revising the regulations to require the warning to enrolled students to include additional details. First, the institution must provide academic and financial information about transfer options available within the institution itself. Because there are often limitations on the transfer of credits from one program to another, institutions must also indicate which course credits would transfer to another program at the institution and whether the students could transfer credits earned in the program to another institution. Finally, we are requiring that all student warnings refer students and prospective students to the Department's College Navigator or other Federal resource for information about similar programs. With this change, we have eliminated the obligation under proposed § 668.410(a)(1)(ii) that the institution research, and advise the student, whether similar programs might be available at other institutions for a student who wishes to complete a program elsewhere.

Changes: We have revised § 668.410(a) to require institutions to provide students with information about their available financial and academic options at the institution, which course credits will transfer to another program at the institution, and whether program credits may be transferred to another institution. For these programs we also have eliminated the requirement that institutions describe the options available to students at other institutions and, instead, have required that institutions include in all of their student warnings a reference to College Navigator for information about similar programs.

Comments: One commenter stressed the importance of consumer testing of the content of the student warning and recommended that we develop the text of the warning in coordination with the Consumer Financial Protection Bureau, Federal Trade Commission, and State attorneys general. Another commenter emphasized the importance of including students who are currently attending the programs most likely to be affected in any consumer testing, including students attending programs offered by for-profit institutions.

Discussion: The regulations include text for the student warnings. The Secretary will use consumer testing to inform any modifications to the text that have the potential to improve the warning's effectiveness. As a part of the consumer testing process, we will seek input from a wide variety of sources, which may include those suggested by the commenter.

Changes: None.

Comments: Some commenters asserted that requiring an institution to give warnings to students and prospective students would violate the institution's First Amendment rights and particularly its rights relating to commercial speech. These commenters argued that the required warning is not purely factual and uncontroversial, but rather is an ideological statement reflecting a Department bias against the for-profit education industry. Commenters stated that the Department should provide to students and prospective students any such warnings it considers necessary, rather than requiring the institution to do so.

Discussion: We do not agree that it is a violation of an institution's First Amendment rights to require it to give warnings to students and prospective students. We discuss, first, the commenters' objections to the content of the required warnings and, next, their objection to the requirement that the institution itself provide the warnings.

As acknowledged by the commenters who objected to the required warnings, these regulations govern commercial speech, which is ''expression related solely to the economic interests of the speaker and its audience, . . . speech proposing a commercial transaction''; ''material representations about the efficacy, safety, and quality of the advertiser's product, and other information asserted for the purpose of persuading the public to purchase the product also can qualify as commercial speech.'' *APSCU* v. *Duncan,* 681 F.3d 427, 455 (D.C. Cir. 2012) (citations omitted). As the commenters also acknowledged, the case law recognizes that the government may regulate commercial speech, and that different tests apply depending on whether the government prohibits commercial speech or, as is the case with these regulations, merely requires disclosures.[169]

Courts have required that laws regulating commercial speech must directly advance a significant government interest and must do so in

[169] Disclosures may be ''appropriately required . . . in order to dissipate the possibility of consumer confusion or deception.'' *Zauderer* v. *Office of Disciplinary Counsel of Supreme Court of Ohio,* 471 U.S. 626, 651 (1985). If a requirement is ''directed at misleading commercial speech and imposes only a disclosure requirement rather than an affirmative limitation on speech, the less exacting scrutiny set out in *Zauderer* v. *Office of Disciplinary Counsel of Supreme Court of Ohio,* 471 U.S. 626, 105 S.Ct. 2265, 85 L.Ed.2d 652, governs.'' *Milavetz, Gallop & Milavetz, P.A.* v. *United States,* 559 U.S. 229, 230 2010).

a manner narrowly tailored to that goal. *Central Hudson Gas and Elec. Corp.* v. *Public Service Comm'n of N.Y.,* 447 U.S. 557, 564 (1980).

A government requirement that parties disclose ''accurate, factual commercial information'' does not violate the First Amendment if the requirement is ''reasonably related'' to a significant government interest, including not merely ''preventing deception,'' but other significant interests as well. *Am. Meat Inst.* v. *U.S. Dep't of Agric.,* 76 F.3d 18 (D.C. Cir. 2014). In the context of gainful employment programs, as discussed in the NPRM, the government does indeed have an interest in preventing deceptive advertising. Advertising that a service provides a benefit ''without alerting consumers to its potential cost . . . is adequate to establish that the likelihood of deception . . . 'is hardly a speculative one.' '' *Milavetz, Gallop & Milavetz, P.A.* v. *United States,* 559 U.S. 229, 251 (2010) (quoting *Zauderer,* 471 U.S. at 652). However, the government has an interest in not just preventing deception, but an affirmative interest in providing consumers information about an institution's educational benefits and the outcomes of its programs. This interest is well within the range of interests that justify requiring a regulated entity to make disclosures about its products or services. *See Am. Meat Inst.,* 760 F.3d at 27.

The warnings will provide consumers with information of the kind that Congress has already determined necessary to make an ''informed judgment about the educational benefits available at a given institution.'' Public Law 101-542, sec. 102, November 8, 1990, 104 Stat. 2381. Moreover, the government's continued interest over time in disclosures of this nature evidence the significance of its interest. *See Am. Meat Inst.,* 760 F.3d at 23–24.

The particular warnings in these regulations are new, but, for more than thirty years, Congress has required institutions that receive title IV, HEA program funds to make numerous disclosures to current and prospective students akin to the disclosures required under these regulations.[170] The statutory disclosure requirements were first enacted in 1980 and have been expanded repeatedly since then, most recently in 2013. The warning requirements in these regulations are based on the same Federal interest in consumer disclosures demonstrated over these past decades, demonstrating that the interest underlying these regulations is a significant governmental interest.

Courts have found that the requirement that the disclosure is ''narrowly tailored'' to the governmental interest is ''self-evidently satisfied'' when the government requires an entity to ''disclose 'purely factual and uncontroversial information' about attributes of the product or service being offered.'' *Am. Meat Inst.,* 760 F.3d at 26 (citation omitted). The commenters contended that the required warnings and disclosures are not ''factual, uncontroversial information'' and noted that the court in *APSCU* v. *Duncan* indicated doubt that the language of the warning required under the 2011 Prior Rule would meet that test. *APSCU* v. *Duncan,* 870 F.Supp.2d at 155 n.7. They contended that the text of the warning proposed in § 668.410(a) is similarly flawed.

We do not agree that the text of the proposed warning was not factual and uncontroversial. However, as discussed in this section, we have made a number of revisions to the proposed student warning text, and, accordingly, we consider here whether the student warning text in the final regulations is factual and not controversial.

The text of the student warning contains a mixture of fact and explanation. The purely factual component—that ''this program has not passed standards established by the Department''—is not controversial at the time the warning is required because institutions will have had an opportunity to challenge or appeal the Department's calculation of the relevant data.[171] Similarly, the statement that ''if in the future the program does not pass the standards, students who are then enrolled may not be able to use federal student grants or loans to pay for the program'' and may have to find other ways to pay for the program is simply a statement of what might happen if a program does not meet the standards and cannot be considered inaccurate or controversial. The remainder of the warning text in the final regulations—which states that the Department based these standards on the amounts students borrow for enrollment in the program and their reported earnings—is also a factual statement. No part of the student warning text conveys an ideological message or bias against for-profit institutions, given that all GE programs, whether they are offered by for-profit institutions or by public institutions, must provide the warnings in accordance with the regulations, and the warnings are composed solely of factual statements.

In response to comments contending that the Department—rather than the institution—should issue warnings to the consumer on a Department Web site, such as College Navigator, or by direct mailings, we note that existing HEA disclosure requirements are based on congressional findings that having *the institution* disclose ''timely and accurate data is essential to any successful student assistance system.'' H. R. Rep. No. 733, 96th Cong., 2d Sess. (1980) at 52.[172] These regulations similarly require the institution to disclose through the student warning the potential significance of a program's D/E rates. The mandate that institutions deliver the message on their Web sites is tailored to deliver the message in an effective manner, and the content of the message is tailored to provide the kind of information that consumers need to evaluate an individual program that the institution promotes as preparing students for gainful employment.

Although the Department can post warnings for hundreds or even thousands of GE programs on a Department Web site, we do not

[170] Section 485 of the HEA was enacted in 1980 and has been repeatedly amended, most recently in 2013. Section 485 requires an institution to disclose to employees and current and prospective students myriad details regarding campus security policies and statistics on crimes committed on or near campuses, 20 U.S.C. 1092(f); statistics regarding the number and costs of, and revenue from, its athletic programs, 20 U.S.C. 1092(g); and some 23 categories of information about the educational programs and student outcomes, including disclosures of some of the very kinds of information—for the institution as a whole—as required for GE programs in these regulations, including completion rate, placement rate, and retention rate. 20 U.S.C. 1092(a)(1)(L), (R), (U). Not only does the HEA require these disclosures, but the HEA also specifies the manner in which the rate is to be calculated. *See, e.g.,* 20 U.S.C. 1092(a)(3) (completion rate). These disclosures must be made through various media, including ''electronic media.'' *See* 20 U.S.C. 1092(a)(1). In addition, section 487(a)(8) of the HEA requires an institution that advertises job placement rates as a means of attracting students to enroll to make available to prospective students ''the most recent data concerning employment statistics, graduation statistics, and any other information necessary to substantiate the truthfulness of the advertisements.'' 20 U.S.C. 1094(a)(8).

[171] The warning is required only after the Department has issued a notice of determination informing the institution of its final D/E rates and that the institution is subject to the student warning requirements. That determination is the outcome of an administrative appeal process and, as final agency action, is subject to review by a Federal court under the Administrative Procedure Act. By the time the warning is required, therefore, the institution's opportunity to controvert the determination is over.

[172] The congressional findings state that ''education is fundamental to the development of individual citizens and the progress of the Nation as a whole'' and that student consumers and their parents must be able to obtain information to make an ''informed judgment about the educational benefits available at a given institution.'' Public Law. 101–542, sec. 102, November 8, 1990, 104 Stat 2381.

consider such posting to be an effective means of reaching consumers. We note that Congress has reached the same conclusion by requiring that institutions make numerous disclosures not only in their publications but, more recently, through ''electronic media,'' 20 U.S.C. 1092(a)(1), a term already interpreted by the Department to include posting on Internet Web sites, 34 CFR 668.41(b), and posting to the institution's Web site, 20 U.S.C. 1015a(h)(3) (net price calculator). These statutory requirements demonstrate a congressional determination that disclosure to the consumer by the institution itself is necessary to achieve the Federal objective of enabling consumers to make ''informed choices.'' [173] Because the student warnings required by these regulations target a similar and often identical audience as the disclosures already required by the HEA, we believe the congressional mandate provides a sound basis for requiring institutions themselves to make the warnings in order to achieve the purpose of the regulations.

The regulations require an institution to provide the warnings not only by including the warning on its Web site, but by delivering the warning directly to the consumer. The latter method is also tailored to the objective of giving effective and timely information. This is not the first instance in which regulations have required this kind of individual, direct communication by institutions with consumers about Federal aid: Section 454(a)(2) of the HEA authorizes the Department to require institutions to make disclosures of information about Direct Loans, and Direct Loan regulations require detailed explanations of terms and conditions that apply to borrowing and repaying Direct Loans. The institution must provide this information in ''loan counseling'' given to every new Direct Loan borrower in an in-person entrance counseling session, on a separate form that must be signed and returned to the institution by the borrower, or by online or electronic delivery that assures borrower acknowledgement of receipt of the message. 34 CFR 685.304(a)(3).[174] The requirement in those regulations closely resembles the requirements here that the institution provide the warnings directly to the affected consumers.

Although we carefully considered the commenters' concerns, we do not believe that there are any First Amendment issues raised by the student warning requirements in the final regulations. Further, we weighed the concerns against the significant government interest in providing consumers an effective warning regarding a program's performance and eligibility status. In this situation, failure to disclose the potential for loss of eligibility and the consequences of that loss could be misleading and this information is critical to the informed educational decision making of students and prospective students.

Changes: None.

Comments: We received a number of comments about when student warnings must be delivered to prospective students and who constitutes a ''prospective student.'' First, commenters expressed concern that institutional obligations with respect to prospective students were unclear. As discussed under ''§ 668.401 Scope and Purpose,'' commenters were confused about when an individual would be considered a ''prospective student'' for the purpose of the student warning requirements and when student warnings were first and subsequently required to be given to prospective students. In this regard, commenters recommended that, to avoid undue administrative burden and compliance challenges, we eliminate the requirement that institutions provide student warnings upon first contact with a prospective student, given that student warnings are required before execution of an enrollment agreement and in connection with promotional materials. Commenters also expressed concern that the burden associated with giving repeated warnings may outweigh the benefits. Along these lines, some commenters recommended that we conduct consumer testing to determine the point at which student warnings would be most meaningful to prospective students.

As discussed in ''Section 668.401 Scope and Purpose,'' some commenters recommended that student warnings be given not just to ''prospective students'' as defined in the proposed regulations, but also to family members, counselors, and others making enrollment inquiries on their behalf.

Discussion: We agree that the proposed regulations were not clear about how the definition of ''prospective student'' and the student warning requirements interacted. As discussed under ''§ 668.401 Scope and Purpose,'' we have narrowed the definition of ''prospective student.'' However, we agree with the commenter that a third party who makes the first contact with an institution, such as a parent or counselor, may play a significant advisory role in the educational decision-making process for a prospective student. That individual should be given the student warning to convey to the student and we are revising the regulations accordingly. With these changes, we believe that it will be clear when and to whom student warnings must be delivered.

For prospective students, we continue to believe that student warnings should be required both upon first contact and prior to enrollment. Although there will be situations in which contact is first made and a prospective student indicates his or her intent to enroll within a relatively short period of time after that, we believe that any redundancy in requiring delivery of the student warnings at both of these junctures is outweighed by the value in ensuring prospective students have this critical program information at times when they may most benefit from it.

Changes: We have clarified in § 668.410(a)(6)(i) (§ 668.410(a)(2)(i) in the proposed regulations) that first contact about enrollment in a program, triggering the obligation to deliver the student warning, may be between a prospective student and a third party acting on behalf of an institution. We have also clarified in the definition of ''prospective student'' in § 668.402 that such first contact may be between a third party acting on behalf of a prospective student and an institution or its agent.

Comments: Some commenters were concerned about the manner in which student warnings may be delivered to students and prospective students. With respect to enrolled students, commenters expressed concern that institutions would bury the warning in a lot of other information to lessen the warning's impact. These commenters believed that the permitted methods of delivery—hand-delivery, group presentations, and electronic mail—allow for institutional abuse. They suggested that the Department be more specific about the permitted methods of delivery, consider other ways in which student warnings could be delivered—

[173] Congress demonstrated this most recently in Public Law 110–315, sec. 110, August 8, 2008, enacting section 132 of the Higher Education Act, which in subsection (h) requires institutions to disclose on their own Web sites a ''net price calculator'' regarding their programs, while subsection (a) requires the Department to implement a ''College Navigator'' Web site displaying a wide range of data, including some similar data. 20 U.S.C. 1015a(a), (h). In that same law, Congress also amended section 485 of the HEA to add at least seven new disclosures to those already required of the institution itself. 20 U.S.C. 1085(a), as amended by Public Law 110–315, sec. 488(a), 122 Stat. 3293.

[174] The regulations also require even more detailed counseling by the institution for students exiting the institution. 34 CFR 685.304(b).

for example, requiring posted warnings in classrooms and financial aid offices—and use consumer testing to determine the most effective means of delivery and format. One commenter recommended that we require institutions to obtain student acknowledgement of receipt of the warning.

Other commenters recommended changes to the student warning requirements to lessen institutional burden and give institutions more flexibility. Some of these commenters conflated the student warning and the disclosure template delivery requirements. One commenter noted their differences and requested that we collapse the requirements into a single requirement. For example, the proposed regulations require institutions to obtain written confirmation that a prospective student received a copy of the disclosure template; as noted by another commenter, there was no such requirement with respect to the student warning. Some commenters recommended that email confirmation that students have received the student warning should satisfy the student warning requirements. One commenter suggested that an institution should be able to meet the student warning requirements by delivering the disclosure template that includes the student warning to a prospective student as required under § 668.412. One commenter was unsure how institutions would deliver the required written student warning to prospective students who contact the institution by telephone about enrollment in a program, and one commenter proposed that oral warnings be permitted.

Discussion: We agree with the commenter who suggested the Department should more clearly specify the manner in which student warnings may be delivered. To that end, we indicate in the final regulations the permitted methods of delivery of a student warning to each of: (1) Enrolled students, (2) prospective students upon first contact, and (3) prospective students prior to entering into an enrollment agreement.

For enrolled students, as in the proposed regulations, the regulations permit delivery of the student warning in writing by hand-delivery or by email. To ensure that the student warning is prominently displayed, and not lost within an abundance of other information, we are revising the regulations to clarify that any warning delivered by hand must be delivered as a separate document, as opposed to one page in a longer document; and any warning delivered by email must be the only substantive content of the email. We recognize that student warnings delivered by email may go unread by students and that there is a significant benefit to taking steps to help ensure that warnings delivered by email are actually read by the students. Accordingly, as suggested by a commenter, we are revising § 668.410(a) to require that, for a warning delivered by email, an institution must send the email to the primary email address used by the institution for communicating with the student about the program, and receive electronic or other written acknowledgement that the student has received the email. If an institution receives a response indicating the email could not be delivered, the attempted delivery is not enough to meet the requirement in the regulations, and the institution must send the information using a different address or method of delivery. An institution may satisfy the acknowledgement requirement through a variety of methods such as a pop-up window that requires students to acknowledge that they received the warning. Institutions must maintain records of their efforts to deliver the warnings required under the regulations. We believe that the burden on institutions to obtain this acknowledgement is outweighed by the increased likelihood that in the course of, or as a result of, acknowledging receipt, students will read the warning and take it into account when making educational and financial decisions. We note that the requirement to obtain this kind of acknowledgement is no more burdensome than the requirement that institutions do so with regard to entrance counseling requirements. *See* section 485(l)(2) of the HEA (20 U.S.C. 1092(l)(2)); 34 CFR 682.604(f)(3); 34 CFR 685.304(a)(3)(ii)–(iii) (requiring written or electronic receipt acknowledgment).

For the requirement that an institution or its agent provide the student warning upon first contact with a prospective student or a third party acting on behalf of a prospective student, we are clarifying that the warning may be delivered in the same manner as the warning is delivered to enrolled students—by hand-delivery or by email—in accordance with the same requirements that apply to the delivery of warnings to enrolled students. As proposed by a commenter, we are revising the student warning and disclosure template delivery requirements relating to prospective students to permit an institution to deliver the disclosure template with the student warning. In this regard, we are moving the requirement that an institution update its disclosure template to include the student warning from § 668.412 to § 668.410(a)(7) in order to consolidate all of the requirements related to student warnings in one section of the regulations, although we continue to reference this requirement in § 668.412.

We recognize that the first contact between an institution or its agent and a prospective student or a third party acting on the prospective student's behalf may be made by telephone. Although we continue to believe that a written warning is more effective than an oral warning, given that a prospective student will receive the student warning in writing prior to entering into an enrollment agreement, we are revising the regulations to permit an oral warning in these circumstances to lessen administrative burden for institutions, while at the same time ensuring that prospective students receive important information at a critical time in their decision-making process.

For the student warning that must be delivered to a prospective student at least three, but not more than 30, days prior to entering into an enrollment agreement, we are clarifying that all the written methods of delivery permitted for student warnings upon first contact—but not oral delivery—are also permitted in this circumstance. In this regard, we note that, in requiring that a written warning delivered by hand be in a separate document, an institution may not build the student warning into an enrollment or similar agreement where the information could be easily overlooked.

We believe that direct delivery of the warning to students and prospective students makes it most likely that students receive it and review it. While we encourage institutions to post the student warning in classrooms and financial aid offices, institutions will not be required to do so as it is unclear whether the additional benefits of this beyond the other delivery requirements would outweigh the added burden.

As suggested by a commenter, we intend to solicit feedback on the most effective delivery methods through consumer testing.

Changes: We have clarified the methods by which an institution may deliver the required warnings to students and prospective students in § 668.410(a)(5) and (a)(6). In § 668.410(a)(5), we have added the requirement that student warnings that are hand-delivered must be provided in a separate document. We have also required that student warnings that are delivered by email must be the only substantive content of the email and the

institution must receive an electronic or other written acknowledgement from the student that the student received the warning. In addition, we have specified that if an institution receives a response that the email could not be delivered, the institution must use a different address or mode of delivery. Finally, the regulations have been revised to require that an institution maintain records of its efforts to deliver the warning.

In § 668.410(a)(6), we have clarified that the methods of delivery specified for enrolled students, as revised, also apply to prospective students, and we have provided that student warnings may be delivered to a prospective student by providing the prospective student a disclosure template that has been updated to include the student warning. The same requirements with respect to email delivery and acknowledgment of receipt that apply to the warnings to enrolled students will also apply to warnings delivered to prospective students or a third party acting on behalf of the prospective student.

We also have revised § 668.410(a) to specify that an institution may deliver any required warning orally to a prospective student or third party except in the case of a warning that is required to be given before a prospective student enrolls in, registers, or makes a financial commitment with respect to a program.

Comments: Some commenters contended that the requirement that student warnings be provided to the extent practicable in languages other than English for students for whom English is not their first language is unclear because the requirement does not indicate how a school would determine whether English is the first language of a student.

Discussion: Section 668.410(a)(4) (§ 668.410(a)(3) in the proposed regulations) requires that an institution provide, ''if practicable,'' ''alternatives to English-language warnings'' to those prospective students and currently enrolled students for whom English is not their first language. This requirement is not unconstitutionally vague. There are many ways in which an institution could practicably identify individuals for whom English may not be their first language. However, we note one simple test generally applicable to consumer transactions that could be used by institutions in determining whether alternatives to non-English warnings are warranted. That test is whether the language principally used in marketing and recruiting for the program was a language other than English.[175] Where institutional records show that a student responded to an advertisement in a language other than English, or was recruited by an institutional representation in an oral presentation conducted in a language other than English, an institution may readily and practicably identify that student or prospective student as one whose first language is not English. Other methods might also be practicable, but institutions should at a minimum already be familiar with their obligations when they advertise in languages other than English. In addition, institutions should be mindful that Federal civil rights laws (including title VI of the Civil Rights Act of 1964) require institutions to take appropriate measures to ensure that all segments of its community, including those with limited English proficiency, have meaningful access to all their programs and all vital information.

Changes: None.

Comments: With respect to the provision in proposed § 668.412(b)(2) that would require institutions to update a program's disclosure template to include the student warning, one commenter requested that institutions have 90 days from receipt of notice from the Secretary that student warnings are required to make the update, rather than 30 days as provided in the regulations.

Discussion: Because the student warning will include critical information that students will need to consider as a part of their educational and financial decision making, we believe that the student warning must be conveyed as quickly as possible once it has been determined that the program could become ineligible based on its D/E rates in the next award year. As the Department will provide the text of the warning, and institutions should already be aware of or have ready access to any required additional information, we believe that 30 days is a reasonable amount of time to update the disclosure template with the warning. Any burden that institutions might face in meeting this requirement is outweighed by the necessity that students receive this important information as promptly as possible.

Changes: We have moved the requirement that institutions update their disclosure templates to include any required student warning from § 668.412(b)(2) to § 668.410(a)(7), so that all of the requirements with respect to student warnings are in one place for the reader's convenience.

Comments: Several commenters opposed the provision prohibiting an institution from enrolling a prospective student before expiration of a three-day period following delivery of a required student warning. The commenters argued that students are intelligent consumers who do not require a cooling-off period and that the provision is designed to discourage prospective students from enrolling by making enrollment inconvenient. For the same reasons, one of the commenters asked that, if the Department retains the cooling-off period in the final regulations, it eliminate the requirement that a student warning be provided anew before a prospective student may be enrolled, if more than 30 days have passed since the student warning was last given.

Discussion: There is evidence that some institutions use high-pressure sales tactics that make it difficult for prospective students to make informed enrollment decisions.[176] We believe that the three-day cooling-off period provided for in § 668.410(a)(6)(ii) (§ 668.410(a)(2)(ii) of the proposed regulations) strikes the right balance between allowing sufficient time for prospective students to consider their educational and financial options outside of a potentially coercive environment, while ensuring that those prospective students who have had the opportunity to make an informed decision can enroll without having to wait an unreasonable amount of time. We further believe that students are more likely to factor the information contained in the student warning into their financial and educational decisions if the warning is delivered when the student is in the process of making an enrollment decision. We believe 30 days is a reasonable window before a student warning must be reissued.

Changes: None.

Comments: Many commenters stated that GE programs that do not pass the D/E rates measure should be subject to

[175] *See, e.g.,* 16 CFR 14.9, Requirements concerning clear and conspicuous disclosures in foreign language advertising and sales materials: Where ''clear and conspicuous disclosures are required,'' the disclosure shall appear in the ''predominant language of the publication in which the advertisement or sales material appears.'' See also FTC Final Rule, Free Annual File Disclosures, 75 FR 9726, 9733 (Mar. 3, 2010) (noting ''the Commission's belief that a disclosure in a language different from that which is principally used in an advertisement would be deceptive'').

[176] *See* 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); For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success, Senate HELP Committee, July 30, 2012.

limits on their enrollment of students who receive title IV, HEA program funds. Commenters variously proposed that we limit enrollment of students who receive title IV, HEA program funds to the number of students enrolled in the program in the previous year or to an average enrollment of students receiving title IV, HEA program funds over the previous three years. These commenters argued that enrollment limits would provide institutions with the incentive to improve programs more quickly and limit the potential risks to students and taxpayers. According to these commenters, disclosures and student warnings do not provide sufficient protection for students and will not stop an institution from increasing the enrollment of a poorly performing program to maximize title IV, HEA program funds received before the program loses eligibility, at significant cost to students, taxpayers, and the Federal government.

We also received a number of comments opposing limits on enrollment for programs that do not pass the D/E rates measure. These commenters asserted that disclosures and student warnings are sufficient to provide students with the information they need to make their own educational decisions. One commenter cited economic theory as supporting the proposition that, if parties are fully informed, imposing quotas or limitations creates market inefficiencies. This commenter asked that we consider the costs to students who are not permitted to enroll in a program and compare those costs to the assumed benefits of not enrolling in a program that may or may not become ineligible. The commenters argued that enrollment limits would significantly hinder efforts by institutions to improve programs and could lead to the premature closing of programs.

Discussion: We agree that it is important to protect students from enrolling in poorly performing programs and to protect the Federal investment in GE programs. However, we believe that the accountability framework, in which the D/E rates measure is used to determine a program's continuing eligibility for title IV, HEA program funds, adequately safeguards the Federal investment and students, while allowing GE programs the opportunity to improve. Further, we believe that the warnings to students and prospective students about programs that could become ineligible based on their D/E rates for the next award year, and the required disclosures, are meaningful protections that will enable students and their families to make informed decisions.

Changes: None.

Comments: Several commenters suggested that institutions should have the opportunity to pay down the debt of students and provide the students some relief while, at the same time, improving program performance under the accountability metrics. These commenters argued that a voluntary loan reduction plan would permit institutions a greater measure of control over program performance under the accountability metrics and benefit students, particularly those students who withdraw from, or fail, a program early in the program. The commenters proposed a number of specific terms for such a loan reduction plan, including giving institutions flexibility to determine the amount of institutional grants to be used to pay down student debt.

Discussion: We acknowledge the desire to ease the debt burden of students attending programs that become ineligible and to shift the risk to the institutions that are enrolling students in these programs. We also recognize that the loan reduction plan proposal would give institutions with the funds to institute such a program a greater measure of control over their performance under the D/E rates measure. However, as stated in the NPRM, the discussions among the negotiators made it clear that these issues are extremely complex, raising questions such as the extent to which relief would be provided, what cohort of students would receive relief, and whether the proposals made by negotiators would be sufficient. The comments we received confirm that this issue requires further consideration. Accordingly, the Department is not addressing these concerns in the final regulations, and will continue to explore ways to provide debt relief to students in future regulations.

Changes: None.

Comments: Many commenters urged the Department to directly offer debt relief to students enrolled in programs that lose eligibility for title IV, HEA program funds under the GE regulations, as well as to students enrolled in programs that are not passing under the D/E rates measure, so that students are not burdened with sole responsibility for debts accumulated at programs that did not prepare them for employment in their respective fields. They argued that affected students should be ''made whole'' through discharges of their title IV, HEA program loans from the Department and reinstatement of their lost Pell Grant eligibility. The Department, the commenters said, could then pursue from the institutions collection of the discharged funds. They reasoned that such relief would be fair to students, provide institutions with incentive for improvement, and reallocate risk from students to institutions, which are in a better position to assume it. The commenters asserted that students should not be subject to potentially severe financial consequences from borrowing title IV, HEA program funds to attend programs that the Department permitted to operate with its approval, despite not achieving program outcomes deemed acceptable under the D/E rates measure. According to the commenters, provisions for borrower relief would allow affected students to pursue educational opportunities that offered value, and institutions would be held accountable for the costs to taxpayers of poorly spent title IV, HEA program funds.

One commenter contended that, in the context of borrower relief, the Department was placing undue emphasis on supporting institutions and avoiding litigation, and not enough emphasis on protecting students and their families. The commenter proposed that the Department could phase in borrower relief for students over the transition period, with programs not passing the D/E rates measure subject only to student warnings in the first year after implementation of the regulations and enrollment limits and borrower relief provisions taking effect in subsequent years of the transition period.

Many of the commenters who supported full debt relief for borrowers in affected programs requested that, if full relief is not possible, student borrowers be provided partial relief, in the form presented by the Department during the negotiated rulemaking sessions where an institution with a program facing ineligibility in the next year would be required to make available to the Department, for example, through a letter of credit, sufficient funds to reduce the debt burden of students who attended the program during that year if the program became ineligible.

We also received general comments opposing any borrower relief provisions in the regulations.

Discussion: The Department acknowledges the concern that borrowers attending programs that are determined ineligible will remain responsible for the debt they accumulated. However, as explained in the NPRM, none of the circumstances under which the Department has the

authority to discharge title IV, HEA loans under the HEA as a result of ineligibility are applicable to these regulations. 20 U.S.C. 1087(c)(1). This discharge authority does not extend to loans obtained by borrowers who met properly administered admission standards for enrollment in a program or at an institution that was not eligible.[177] We also acknowledge the commenters' interest in excluding those periods in which a student may have received a Pell Grant for attendance at a GE program that did not pass the D/E rates measure from limits otherwise applicable to Pell Grant eligibility. However, section 401(c)(5) of the HEA provides that the period during which a student may receive Federal Pell Grants ''shall not exceed 12 semesters.'' 20 U.S.C. 1070a(c)(5). We read this provision as leaving the Department no authority to exclude specific time periods from that limit.

With respect to the other borrower relief proposals that commenters offered, as we have previously stated, these proposals raise important but complex issues that the Department will continue to consider outside of this rulemaking.

Changes: None.

Comments: One commenter recommended that we revise § 668.410(b)(1), which generally prohibits disbursement of title IV, HEA program funds to a student enrolled in a program that has lost eligibility under the regulations, to permit disbursement of such funds until the student completes the program.

Discussion: We decline to adopt the commenter's proposal. A GE program's loss of eligibility is effective, under 34 CFR 668.409(b), on the date specified in the notice of final determination. Section 668.410(b)(1) adopts by explicit reference the general rule in § 668.26(d), which the Department applies in all instances in which an institution's participation in the title IV, HEA programs ends. Section 668.26(d)(1), consistent with § 600.41(d), provides that after a GE program loses eligibility, an institution may make no new commitments for title IV, HEA program funds, but may fund the remainder of certain commitments of grant and loan aid. These provisions apply the loss of eligibility to students then enrolled in the program in a way that modestly defers the effect of that loss as it affects their ability to meet their financial commitments and provides some time to make alternative arrangements or transition to another program or institution. Students may therefore continue to receive title IV, HEA program funds for attendance at a program that has lost eligibility through the end of any ongoing loan period or payment period, which periods could include a full award year.[178] Even if we were to interpret the HEA to permit extending the period during which students could receive title IV, HEA program funds to attend an ineligible program beyond these long-established limits, we see no valid reason to do so. To further extend the period during which students may continue to receive title IV, HEA program funds to attend an ineligible program would encourage students to invest more time, money, and limited Pell Grant eligibility in programs that produce unacceptable student outcomes. The commenter offers no reason to treat a loss of eligibility under these regulations differently than any other loss of eligibility, and we see none.

Changes: None.

Comments: One commenter suggested that we revise § 668.410(b)(2), which provides for a three-year period of ineligibility for programs that are failing or in the zone and that are voluntarily discontinued, to more clearly indicate when the period of ineligibility begins and ends. The commenter recommended revisions based on language in the iCDR regulations in 34 CFR 668.206.

Discussion: We appreciate the commenter's suggestion and are revising the provision to indicate more clearly when the three-year period of ineligibility begins.

Changes: We have revised § 668.410(b)(2) to clarify that the three-year period of ineligibility begins, as applicable, on the date specified in the notice of determination informing the institution of a program's ineligibility or on the date the institution discontinued a failing or zone program.

Comments: One commenter suggested that we revise § 668.410(b)(2) and (b)(3), which provide for a three-year period of ineligibility for programs that are failing or in the zone and that are voluntarily discontinued, to capture programs that are voluntarily discontinued after the institution receives draft D/E rates that would be failing or in the zone if they were final. In such cases, the commenter recommended that the Department should, despite the program's discontinuance, calculate its final D/E rates and, if those final D/E rates are failing or in the zone, impose the three-year ineligibility period as provided in § 668.410(b)(2) on that program and any substantially similar programs. The commenter suggested that, without the proposed revision, there would be a ''loophole'' that institutions could exploit to avoid the three-year ineligibility period.

Discussion: We agree with the commenter that we should not permit an institution to avoid the three-year ineligibility period by discontinuing a poorly performing program after the issuance of draft D/E rates that are failing or in the zone, but before the issuance of final D/E rates. Accordingly, the final regulations provide that, if an institution discontinues a program after receiving draft D/E rates that are failing or in the zone, the institution may not seek to reestablish that program, or establish a substantially similar program, until final D/E rates have been issued for that program, and only then if the final D/E rates are passing or the three-year period of ineligibility has expired. In the event there is a three-year period of ineligibility that is triggered by the final D/E rates, the period will begin on the date that the program was discontinued, and not the date the final D/E rates were issued, so

[177] As noted in the NPRM, the Department has previously 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 22462, 22470 (April 29, 1994), 59 FR 2486, 2490 (Jan. 14, 1994).

[178] Loans and grants are treated similarly, but slightly differently, under § 668.26(d). With respect to Direct Loans, the loss of eligibility will be expected to occur during a ''period of enrollment''—a term defined under 34 CFR 685.102 as a period that must coincide with one or more bona fide academic terms established by the school for which institutional charges are generally assessed (e.g., a semester, trimester, or quarter in weeks of instructional time; an academic year; or the length of the program of study in weeks of instructional time).

The period of enrollment is referred to as the ''loan period.'' The maximum period for which a Direct Loan may be made is an academic year, 34 CFR § 685.203, and therefore the ''loan period'' for a loan cannot exceed an academic year even if the program of study is longer than an academic year. Section 668.26(d)(3) limits the disbursements that may be made after loss of eligibility to those made on ''a loan,'' if all of the following conditions are met: The borrower must be enrolled on the date on which eligibility is lost; the loss of eligibility must take place during a loan period; a first disbursement on the loan has already been made before the date on which eligibility is lost; and the institution must continue to provide training in that GE program at least through the scheduled completion date of the academic year for which the loan was scheduled, or the length of the program, whichever falls earlier. With respect to Pell Grants, the institution may disburse Pell Grant funds under similar conditions: The student is enrolled on the date program eligibility ceases, the institution has already received a valid output record for the student, the requested Pell Grant is intended to be disbursed for the ''payment period'' [academic term or portion of a term, see: 34 CFR 668.4] during which the loss of eligibility occurs, or a prior payment period, and the institution continues to provide training in the program until at least the completion of the payment period. 34 CFR 668.26(d)(1).

that the ineligibility period is no longer than the three years that would apply to any other zone or failing program that is voluntarily discontinued.

Changes: We have revised § 668.410(b)(2) to provide that a program that was discontinued after receiving draft D/E rates that are failing or in the zone, but before receiving final D/E rates, is ineligible, and the institution may not seek to establish a substantially similar program, unless the program's final D/E rates are determined to be passing or, if its final D/E rates are also failing or in the zone, the three-year ineligibility period, dating from the institution's discontinuance of the program, has expired. We also have revised this section to clarify that the provision regarding determination of the date a program is voluntarily discontinued applies to programs discontinued before their final D/E rates are issued.

Comments: We received a number of comments about the definition of ''substantially similar'' programs and the limitations on an institution's ability to start a program that is substantially similar to an ineligible program.

Several commenters expressed concern that the definition of ''substantially similar'' is not broad enough to capture all of the similar programs that an institution may seek to establish in the place of a poorly performing program in order to avoid accountability. These commenters said that the definition should not require that programs share the same credential level in order to be considered substantially similar. These commenters were concerned that, for example, an institution could simply convert an ineligible certificate program into a new associate degree program, without complying with the three-year ineligibility period and taking any action to improve the program. Similarly, commenters were also concerned that the requirement that substantially similar programs share the first four digits of a CIP code is too narrow. They argued that there is sufficient overlap between four-digit CIP codes such that institutions could avoid the restriction on establishing a program that is substantially similar to a program that became ineligible within the most recent three years by using another four-digit CIP code that aligns with the same curriculum. These commenters suggested that we define programs as ''substantially similar'' if they share the same two-digit CIP codes. Alternatively, the commenters recommended that the Department evaluate on a case-by-case basis whether programs with the same two-digit CIP code are substantially similar, and require documentation that a new program within the same two-digit CIP code will meet the D/E rates measure.

Other commenters suggested that we treat programs as substantially similar only if they share the same four-digit CIP code and credential level. These commenters also recommended that we permit the establishment of programs that are substantially similar to an ineligible program if the institution has other substantially similar programs that are passing the D/E rates measure. For example, the commenters explained, if an institution offers multiple substantially similar programs and at least 50 percent of those programs are passing the D/E rates measure, an institution would be permitted to establish a substantially similar program.

Discussion: We agree with the commenters who recommended that programs should not be required to share the same credential level in order to be considered substantially similar and that a definition of ''substantially similar'' that considers credential level would permit institutions to avoid accountability by changing program length.

However, we do not agree that the definition of substantially similar should be broadened to encompass all programs within a two-digit CIP code as substantially similar or that it is necessary to establish a process to evaluate for each new program whether the assigned four-digit CIP code best represents the program content. We are removing the phrase ''substantially similar'' from the definition of CIP code and establishing in § 668.410 that two programs are substantially similar to one another if they share the same four-digit CIP code. Institutions may not establish a new program that shares the same four-digit CIP code as a program that became ineligible or was voluntarily discontinued when it was in the zone or failing within the last three years. An institution may establish a new program with a different four-digit CIP code that is not substantially similar to an ineligible or discontinued program, and provide an explanation of how the new program is different when it submits the certification for the new program. We presume based on that submission that the new program is not substantially similar to the ineligible or discontinued program, but the information may be reviewed on a case by case basis to ensure a new program is not substantially similar to the other program.

We believe that these revisions strike an appropriate balance between preventing institutions from closing and restarting a poorly performing program to avoid accountability and ensuring that institutions are not prevented from establishing different programs to provide training in fields where there is demand.

We believe that it is appropriate to require an institution that is establishing a new program to provide a certification under § 668.414 that includes an explanation of how the new program is not substantially similar to each program offered by the institution that, in the prior three years, became ineligible under the regulations' accountability provisions or was voluntarily discontinued by the institution when the program was failing, or in the zone with respect to, the D/E rates measure. We also discuss this change in ''Section 668.414 Certification Requirements for GE Programs.''

Changes: We have revised § 668.410 to provide that a program is substantially similar to another program if the programs share the first four digits of a CIP code. We also have revised this section to provide that the Secretary presumes a program is not substantially similar to another program if the programs do not share a four-digit CIP code. The institution must submit an explanation of how the new program is not substantially similar to the ineligible or voluntarily discontinued program. In § 668.410(b)(3), we have also corrected the reference to § 668.414(b) to § 668.414(c).

Section 668.411 Reporting Requirements for GE Programs

Comments: Numerous commenters asserted that institutions with low borrowing rates or low cohort default rates should be exempt from the reporting requirements, arguing that such programs do not pose a high risk to students or taxpayers. For example, some commenters recommended exempting a program from the reporting requirements where an institution certifies that: (1) Less than fifty percent of the students in the program took out loans for the two most recent academic years, (2) fewer than 20 students receiving title IV, HEA program funds completed the program during the most recent two academic years, and (3) the default rate falls below a reasonable threshold for two consecutive years. These commenters proposed that a program should be subject to the reporting requirements for a minimum of two years at the point that it does not meet one of these three exemption requirements for two consecutive years. Other commenters proposed variations

of this approach, such as exempting from the reporting requirements institutions with an institutional cohort default rate of less than fifteen percent. Similarly, one commenter said that foreign schools should be exempt from the reporting requirements, asserting that certificate programs at foreign institutions are of low risk to American taxpayers since those programs have relatively few American students compared to the entire enrollment in the program.

Discussion: We do not agree that a program, foreign or domestic, should be exempt from the reporting requirements because it has a low borrowing rate, low institutional cohort default rate, or low number of students who receive title IV, HEA program funds. The information that institutions must report is necessary to calculate the D/E rates and to calculate or determine many of the disclosure items as provided in § 668.413. (*See* ''Section 668.413 Calculating, Issuing, and Challenging Completion Rates, Withdrawal Rates, Repayment Rates, Median Loan Debt, Median Earnings, and Program Cohort Default Rates'' for a discussion of the disclosure items that the Department will calculate.) Exempting some institutions from the reporting requirements, whether partially or fully, would undermine the effectiveness of both the accountability and transparency frameworks of the regulations because the Department would be unable to assess the outcomes of many programs. In addition, students would not be able to access relevant information about these programs and compare outcomes across multiple metrics. Further, a policy that allowed exemptions from reporting, accountability, and transparency, regardless of the basis, in some years but not others would be impossible to implement. Without consistent annual reporting, the Department would, in many cases, be unable to calculate the D/E rates or disclosures in non-exempted years as these calculations require data from prior years when the exemption may have applied.

Changes: None.

Comments: A few commenters recommended requiring institutions to report additional items to the Department. Specifically, some commenters argued that the Department should collect and make public job placement rates to enable the Department, States, researchers, and consumers to easily access this information to compare programs at different schools. The commenters also asserted that requiring institutions to report these rates at the student level would improve compliance at institutions that are currently required to calculate job placement rates but do not do so.

Other commenters recommended that institutions be required to report the SOC codes associated with their programs. These commenters disagreed with the Department's assertion in the NPRM that it would not be appropriate to collect SOC codes at the student level. They argued that requiring institutions to report the SOC codes that they must disclose under § 668.412 would strengthen the Department's ability to monitor whether programs have the necessary accreditation or other requirements for State licensing and would support more accurate and realistic disclosure of the SOC codes associated with a program's CIP code.

Discussion: We agree that allowing the Department, States, researchers, and consumers to access job placement information will be beneficial. Accordingly, we are adding a requirement for institutions to report job placement rates at the program level if the institution is required by its accrediting agency or State to calculate a placement rate for either the institution or the program using the State's or agency's required methodology and to report the name of the State or accrediting agency. For additional information about job placement rates, see the discussion under ''Section 668.412 Disclosure Requirements for GE Programs.'' While all other required reporting for the initial reporting period must be made by July 31, 2015, due to operational issues, institutions will report job placement rates at a later date and in such manner as prescribed by the Secretary in a notice published in the **Federal Register**.

The Department already identifies SOC codes for GE programs as part of each institution's PPA. We will continue to consider requirements for updating and monitoring SOC codes to improve oversight while limiting the reporting burden on institutions.

Changes: We have added a requirement in § 668.411(a)(3) that institutions must report to the Department a placement rate for each GE program, if the institution is required by its accrediting agency or State to calculate a placement rate for either the institution or the program, or both, using the methodology required by that accrediting agency or State, and the name of that accrediting agency or State. We have also renumbered the paragraphs that follow this reporting requirement. In § 668.411(b)(1), we have clarified that the July 31 reporting deadline does not apply to the reporting of placement rates but rather that reporting on that item will be on a date and in a manner announced by the Secretary in a notice published in the **Federal Register**.

Comments: Several commenters raised concerns that the reporting requirements would be very burdensome for institutions and that the Department underestimated in the NPRM the burden and cost to implement these provisions. In particular, some commenters argued that the reporting requirements would duplicate reporting that institutions already provide and that the additional compliance burden and paperwork hours would lead to higher costs for students. Another commenter said that they would need to hire additional staff to comply with the reporting requirements.

Discussion: Any burden on institutions to meet the reporting requirements is outweighed by the benefits of the accountability and transparency frameworks of the regulations to students, prospective students, and their families. The Department requires the reporting under the regulations to calculate D/E rates, as provided in §§ 668.404 and 668.405, and to calculate or determine many of the disclosure items, as provided in § 668.413. (*See* ''Section 668.413 Calculating, Issuing, and Challenging Completion Rates, Withdrawal Rates, Repayment Rates, Median Loan Debt, Median Earnings, and Program Cohort Default Rate'' for a discussion of the disclosure items that the Department will calculate.) Although there is some overlap with current enrollment reporting and reporting for the purposes of the 150 percent Direct Subsidized Loan Limits, those data do not include award years prior to 2014–2015, nor do they include several data elements required for the calculation of D/E rates, including institutional debt, private education loan debt, tuition and fees, and allowance for books and supplies.

We believe that our estimates of the burden of the reporting requirements are accurate. As an initial matter, the commenters did not submit any data to show that the Department's estimates are inaccurate. The Department's estimates are based on average anticipated costs and the actual burden may be higher for some institutions and lower for others. Various factors, such as the sophistication of an institution's systems, the size of the institution and the number of GE programs that it has, whether or not the institution's operations are centralized, and whether the institution can update existing

systems to meet the reporting requirements will affect the level of burden for any particular institution. (See *Paperwork Reduction Act of 1995* for a more detailed discussion of the Department's burden estimates.)

We have not estimated whether or how many new personnel may be needed to comply with the reporting requirements. Allocating resources to meet the reporting requirements is an individual institution's administrative decision. Some institutions may need to hire new staff, others will redirect existing staff, and still others will not need to make staffing changes because they have highly automated reporting systems.

In order to minimize burden, the Department will provide training to institutions on the new reporting requirements, provide a format for reporting, and, so that institutions have sufficient time to submit their data for the first reporting period, enable NSLDS to accept reporting from institutions beginning several months prior to the July 31, 2015, deadline. Additionally, we will consider other ways to simplify our reporting systems.

Changes: None.

Comments: One commenter recommended that institutions should only be required to report data they have currently available in an electronic format. The commenter believed that some institutions may not have, in easily accessible formats, the older data that the Department would need to calculate rates in the first few years after implementation of the regulations due to migrations to new data systems and the rapid changes in student information systems in recent years.

Discussion: In accordance with the record retention requirements under § 668.24(e), most institutions should have retained the information regarding older cohorts of students that must be reported in the initial years of the regulations, even if the data are maintained in multiple systems or formats. Further, many institutions may have a policy of retaining student records for longer periods, or do so as a result of State or accreditor requirements. Nonetheless, we understand that some institutions may no longer have records for years prior to the required retention period under § 668.24(e). Pursuant to the 2011 Final Rules, institutions were similarly required to report information from several years prior to the reporting deadline. The vast majority of institutions were able to comply with the requirements of the 2011 Final Rules, and we again anticipate that cases where data are completely unavailable will be limited. In those instances, an institution may, under § 668.411, provide an explanation acceptable to the Secretary for the institution's inability to comply with part of the reporting requirements.

Changes: None.

Comments: Some commenters recommended adding an alpha-numeric program identifier as an optional reporting requirement so that institutions could report program information separately for individual program locations or formats (e.g. on-line program, part-time program, evening, or weekend program). The commenters asserted that calculating the disclosure items separately in this way would give students and prospective students more meaningful information about program outcomes for their particular location or format.

Discussion: Although we will permit an institution to disaggregate some disclosure items, such as tuition and fees and the percentage of students who borrowed to attend the program by program length, location or format, other disclosures, such as the D/E rates and the items that the Department calculates for institutions under § 668.413, will be made at the six-digit OPEID, CIP code, and credential level and may not be disaggregated. Therefore, adding this optional reporting field is unnecessary. *See* ''Section 668.412 Disclosure Requirements for GE Programs'' for a more detailed discussion of whether and when an institution may disaggregate its disclosures.

Changes: None.

Comments: Some commenters requested clarification and additional information about how institutions should report and track students' enrollment in GE programs. They noted that students often switch programs mid-course or enroll in multiple programs at once, particularly at community colleges.

Discussion: We intend to revise the GE Operations Manual and the NSLDS GE User Guide to reflect the regulations. In updating these resources, we will provide additional guidance on tracking student enrollment. Additionally, we will provide ongoing technical support to institutions regarding compliance with the reporting requirements.

Changes: None.

Comments: One commenter argued that the reporting requirements in § 668.411 would violate section 134 of the HEA (20 U.S.C. 1015c), which prohibits the creation of new student unit record databases. The commenter asserted that the new requirements under the regulations for institutions to report private education loan data and other personal data on individuals who receive title IV, HEA program funds and for the Department to retain this newly required data in NSLDS would constitute such a drastic expansion of NSLDS as to constitute a new database in violation of the statutory prohibition against such an expansion of an existing database. *APSCU* v. *Duncan,* 930 F.Supp.2d at 220, 221. The commenter further contended that the Department has the burden of proving that gathering personally identifiable information pursuant to these regulations does not create a new database under section 134 of the HEA even if that collection were limited to data on individuals receiving title IV, HEA program funds.

Discussion: As explained previously, in response to the court's interpretation of relevant law in *APSCU* v. *Duncan,* the Department has changed the reporting and accountability determinations in these regulations such that they pertain only to individuals receiving title IV, HEA program funds. The 2011 Prior Rule required institutions to report data on all individuals enrolled in a GE program, including those who did not receive title IV, HEA program funds; the Department retained that data in NSLDS. The court found that retaining data on individuals who did not receive title IV, HEA program funds was an improper creation of a new database.[179] Importantly, the court disavowed any view that it was ruling that 20 U.S.C. 1015c barred the Department from gathering and retaining in NSLDS new data not previously collected on individuals who received title IV, HEA program funds. Accordingly, the commenter's assertion that the court considered 20 U.S.C. 1015c to bar the addition of new data to NSLDS on individuals receiving title IV, HEA funds is unsupportable.

The objection that the Department fails to demonstrate that adding to the

[179] [NSLDS's] ''overall purpose'' has never included the collection of information on students who do not receive and have not applied for either federal grants or federal loans. To expand it in that way would make the database no longer ''a system (or a successor system) that . . . was in use by the Secretary, directly or through a contractor, as of the day before August 14, 2008.'' 20 U.S.C. 1015c(b)(2). The Department could not create a student unit record system of information on all students in gainful employment programs; nor can it graft such a system onto a pre-existing database of students who have applied for or received Title IV assistance. *For that reason—and not, as the court previously held, because the added information is unnecessary for the operation of any Title IV program*—the expansion is barred by the statutory prohibition on new databases of personally identifiable student information.

APSCU v. *Duncan*, 930 F.Supp.2d at 221 (emphasis added).

NSLDS new data title IV, HEA program funds recipients does not create a new database disregards the essential purposes for gathering this added data: To determine GE program eligibility, and to provide ''accurate and comparable information'' to ''students, prospective students, and their families.'' 79 FR 16426, 16488. Each of these objectives is distinct, and therefore the Department intended each to operate if the other were found to be unenforceable. *Id.* Section 134 of the HEA allows us to use current NSLDS data, and to add data to NSLDS, for both purposes under section 134 because both are ''necessary for the operation of programs authorized by . . . title.'' 20 U.S.C. 1015c(b)(1). Section 134 does not define what uses are ''necessary for operation of the title IV programs,'' nor does the HEA statute articulate a list of those functions for which the Department can use NSLDS. Whether a use is ''necessary'' is left to the Department's discretion, in light of statutory mandates, duly-authorized regulations, or simple practical necessity. For example, from its inception in 1993, the Department has used NSLDS as to determine institutional eligibility by reason of an institution's CDR, a purpose almost identical to determining GE program eligibility. Nothing in section 435 of the HEA, which controls calculation of iCDR, mentions NSLDS or directs the Department to use NSLDS to calculate iCDR. Nevertheless, the Department has consistently used NSLDS to calculate iCDR for purposes of section 435(a). Similarly, the Department has by regulation since 1989 terminated eligibility of an institution with a single year iCDR exceeding 40 percent or more. 34 CFR 668.206(a)(1), 54 FR 24114, 24116 (June 5, 1989). The Department has used NSLDS for that regulatory eligibility determination as well. *See* Notice of a New System of Records, 59 FR 65532 (Dec. 20, 1994) 18–40–0039, Purpose (2), Routine Use (a)(2).[180] Accordingly, use of NSLDS data to determine programmatic eligibility under these regulations involves the identical kind of eligibility determination as the iCDR determination process used for NSLDS over the past 20 years. Section 485 of the HEA authorizes the Department to maintain in NSLDS information that ''shall include (but is not limited to) . . . the eligible institution in which the student was enrolled . . .'' 20 U.S.C. 1092b(a)(6). Because the court upheld the Department's authority to determine whether a program in fact prepared students for gainful employment, the Department is adding data to the existing NSLDS database as needed to make a programmatic eligibility determination. Adding data regarding recipients of title IV student financial assistance in order to make this eligibility determination does not change NSLDS into a new database.

The Court further concluded that requiring disclosures was well within the Department's authority. *APSCU* v. *Duncan*, 870 F.Supp.2d at 156. Doing so is, in the judgment of the Department, necessary for the operation of the title IV, HEA programs. Adding data on individuals who have received title IV, HEA program funds to NSLDS in order to facilitate these disclosures similarly does not change NSLDS into a new database.

Changes: None.

§ 668.412 Disclosure Requirements for GE Programs

General

Comments: Several commenters recommended that the Department include some but not all of the proposed disclosure items in the final regulations. They argued that including all of the information would overwhelm students. Although commenters identified varying disclosure items that they believed prospective and enrolled students would find most helpful, they generally agreed that the most critical information for students includes information about how long it takes to complete a program, how much the program costs, the likelihood that students would find employment in their field of study, and their likely earnings in that field. Another commenter suggested that the Department survey students about the types of information they would find helpful in choosing an academic program or college.

Discussion: We believe that all of the proposed disclosures would provide useful and relevant information to prospective and enrolled students. However, we agree with the commenters that it is critical to provide prospective and enrolled students with the information that they would find most helpful in evaluating a program when determining whether to enroll or to continue in the program. As we discussed in the NPRM, we do not intend to include all of the disclosure items listed in § 668.412 on the disclosure template each year. We will use consumer testing to identify a subset of possible disclosure items that will be most meaningful for students.

Changes: None.

Comments: Several commenters supported having robust disclosures, and they recommended requiring additional disclosures on the disclosure template. In particular, commenters recommended requiring institutions to disclose the names and qualifications of a program's instructors, the institution's most recent accreditation findings (e.g., self-studies, accreditation visiting team action reports and action letters), compliance audits, financial statements, and the institution's application for Federal funds to the Department. Commenters also recommended that the Department post each institution's program participation agreement (PPA) online for public inspection or, at a minimum, require institutions to publicly post the GE-related portions of the institution's PPA so that the public can review the information regarding its GE programs certified by the institution under § 668.414. Some of the commenters argued that even robust disclosures would be inadequate to protect consumers and that the disclosures should work in conjunction with other substantive protections like strong debt metrics and certification requirements, provisions for borrower relief, and enrollment caps.

Discussion: In determining which pieces of information to require institutions to disclose, we have focused on identifying the information that will be most helpful to prospective and enrolled students, and we have built flexibility into the regulations to allow for modifications based on consumer testing and student feedback. Although access to accrediting agency documentation or Federal compliance audits of institutions is valuable and institutions may opt to disclose this information independently, including this information on the disclosure template may not be useful to prospective and enrolled students. Nonetheless, if consumer testing or other sources of evidence show that prospective and enrolled students would benefit from this information, we would consider adding these items to the disclosure template in the future through a notice published in the **Federal Register**.

As discussed under ''Section 668.414 Certification Requirements for GE Programs,'' institutions will be required to certify that the GE programs listed on their PPA meet applicable accreditation, licensure, and certification requirements. The PPA is a standardized document that largely mirrors the requirements in 34 CFR 668.14. Unless an institution has a provisional PPA, the PPA for one

[180] The NSLDS is currently renumbered as 18–11–06.

institution will be nearly identical to that of another except for the list of the institution's GE programs. Because PPAs do not generally contain unique information about institutions, we do not believe that it would be helpful to consumers for the Department to begin publishing institutions' PPAs or requiring institutions to publish the GE-related portions of their PPAs. We note, however, that we would provide a copy of an institution's PPA upon request through the Freedom of Information Act process.

Lastly, as discussed in the NPRM and in these regulations, we believe that the disclosure requirements, combined with the accountability metrics, the certification requirements, and the student warnings, will be effective in supporting and protecting consumers. We address in ''Section 668.410 Consequences of the D/E Rates Measure'' comments suggesting we adopt enrollment limits and borrower relief provisions.

Changes: None.

Comments: A commenter stated that institutions should be allowed to disclose multiple SOC codes that match a program's CIP code.

Discussion: We agree that a program may be designed to lead to several occupations as indicated by Department of Labor SOC codes. For this reason, allowing institutions to select one or multiple SOC codes for inclusion on the disclosure template is among the disclosures that were required under the 2011 Final Rules and the potential disclosures under these regulations.

Changes: None.

Comments: Several commenters compared the disclosure requirements of the proposed regulations to those of the current regulations. One commenter believed that adding new disclosures to the current requirements without coordinating them would be administratively burdensome for institutions and confusing for students. Some commenters noted that, as under the current regulations, some programs will have too few students to make some of the disclosures because of privacy concerns. These commenters recommended incorporating existing sub-regulatory guidance from the Department into the final regulations that directs institutions to refrain from disclosing information, such as median loan debt, where ten or fewer students completed the program. Some commenters argued that the current disclosures are adequate and should be retained in the final regulations without any changes. Lastly, one commenter noted that the NPRM did not describe the impact of the current disclosure requirements or whether they are achieving their purpose.

Discussion: Although the disclosures in § 668.6(b) of the 2011 Final Rules are useful, the additional disclosures in these regulations will make additional valuable information available to students and prospective students. Further, the current disclosure requirements are limiting because § 668.6(b) does not give the Department the flexibility to change the items as it learns more about the information students find most useful. We agree with the commenters that we must carefully consider how to transition from the current disclosure requirements to the requirements of the final regulations without confusing or overwhelming students, and we will use consumer testing to identify the best way to do this. We will also provide guidance and technical assistance to institutions to help them transition to the new disclosures. We will be evaluating the impact of the disclosures we are establishing in these regulations.

Because it will take some time for the Department to conduct consumer testing regarding the disclosure template and to seek comment on the disclosure template pursuant to the Paperwork Reduction Act of 1995, we are providing in the regulations that institutions must comply with the requirements in this section beginning on January 1, 2017. To ensure that institutions continue to disclose information about their GE programs, we are retaining and revising § 668.6(b) to provide that institutions must comply with those disclosure requirements until December 31, 2016.

With respect to the privacy concerns raised by the commenters, for the 2011 Final Rules, the Department provided sub-regulatory guidance to institutions instructing them not to disclose median loan debt, the on-time completion rate, or the placement rate (unless the institution's State or accrediting agency methodology requires otherwise) for a program if fewer than 10 students completed the program in the most recently completed award year. This guidance remains in effect. Further, we are revising §§ 668.412 to reflect this guidance.

Changes: We have revised §§ 668.412 to specify that an institution may not include on the disclosure template information about completion or withdrawal rates, the number of individuals enrolled in the program during the most recently completed award year, loan repayment rates, placement rates, the number of individuals enrolled in the program who received title IV loans or private loans for enrollment in the program, median loan debt, mean or median earnings, program cohort default rates, or the program's most recent D/E rates if that information is based on fewer than 10 students.

We also have revised § 668.412 to specify that institutions must begin complying with the disclosure requirements beginning on January 1, 2017. We also have revised § 668.6(b) to provide that institutions must comply with those disclosure requirements through December 31, 2016.

Comments: Commenters raised general concerns about the burden associated with the disclosure requirements. In particular, some commenters were concerned that the potential for annual changes in the content and format of the disclosures would create uncertainty and significant administrative burden for institutions. One commenter recommended that the Department study how students use information before establishing the disclosure requirements. The commenter suggested that the Department calculate simple measures and publish relevant information on College Navigator while conducting this study. Other commenters objected that disclosure requirements were vague and burdensome by, for example, requiring disclosure of the total cost of tuition, fees, books, supplies, and equipment that would be incurred to complete the program within its stated term.

Discussion: We believe that the benefits of disclosure items for consumers outweigh the increase in institutional burden. In addition, the Department does not intend to require institutions to make all of the disclosures each year. The regulations allow the Department flexibility to adjust the disclosures as we learn more about what information will be most helpful to students and prospective students. However, we do not expect that the disclosure template will vary dramatically from year to year, and so in most years, there will be little added burden because of this provision. We will publish changes to the items to be disclosed in the **Federal Register**, providing an opportunity for the public, specifically institutions and consumers, to provide us with feedback about those changes.

Further, we have included provisions to minimize the burden associated with the disclosures as much as possible. We recognize that an institution may not know precisely the cost that a prospective student would incur to attend and complete a GE program, as must be disclosed but the institution must already gather much of the same data to comply with the disclosure

obligations imposed by section 1132(h) of the HEA, and the solution adopted there is applicable here: If the institution is not certain of the amount of those costs, the institution shall include a disclaimer advising that the data are estimates.[181]

In addition, the Department, rather than institutions, will calculate the bulk of the disclosure items, as discussed under ''Section 668.413 Calculating, Issuing, and Challenging Completion Rates, Withdrawal Rates, Repayment Rates, Median Loan Debt, Median Earnings, and Program Cohort Default Rates.'' As we implement the regulations, we will continue to analyze the burden associated with the disclosure requirements and consider ways to minimize that burden.

Changes: None.

Comments: Some commenters raised concerns about how the proposed disclosure requirements would affect or be affected by other existing or planned efforts and initiatives such as the college ratings system, College Navigator, and College Scorecard. One commenter suggested that the disclosures should be coordinated with the planned college ratings system. Other commenters noted that institutions already disclose graduation rates, costs, and other information through College Navigator and the College Scorecard, and argued that requiring additional disclosures that use similar data points but measure different cohorts of students would not be helpful to prospective students. Some of the commenters suggested that modifying College Navigator and College Scorecard to provide students and families with meaningful information with respect to all programs and all institutions would be less burdensome and more effective.

In addition to these concerns, one commenter suggested that the Department utilize College Navigator, the College Scorecard, and the College Affordability and Transparency Center to disclose when an institution's GE program is in the zone to ensure that students and other users have access to information about programs in jeopardy of losing their eligibility.

Discussion: The College Navigator and the College Scorecard are useful for consumers and we intend for the planned college ratings system to provide additional helpful information. But, we do not agree that they make the GE disclosures unnecessary. First, these three tools provide, or in the case of the college ratings system will provide, consumers with information at an institutional level. They do not provide information about the graduation rates, debt, or employment and earnings outcomes of particular GE programs. Second, College Navigator and the College Scorecard are, and the college ratings system will be, accessible through the Department's Web site, whereas institutions will be required to publish the disclosures required by these regulations where students are not only more likely to see them, but also more likely to see them early in their search process—on the institutions' own Web sites and additionally, in informational materials such as brochures. Accordingly, we believe that the disclosures required by these regulations will be more effective in ensuring that students and prospective students obtain critical information about program-level student outcomes. We note that this approach is consistent with long-standing provisions in the HEA requiring institutions to publish consumer information on their Web sites under the assumption that students and families are likely to look on those Web sites for that information.

With respect to the suggestion that the Department use College Navigator, the College Scorecard, and the College Affordability and Transparency Center to alert prospective students and families when an institution has a GE program in the zone under the D/E rates, the Department intends to make this information publicly available and may choose to use one of these or another vehicle to do so.

Changes: None.

Comments: Several commenters argued that all institutions participating in the title IV, HEA programs should be required to make the disclosures for all of their programs. They contended that it is unfair and discriminatory to apply the transparency framework only to GE programs. The commenters asserted that the disclosures would not be meaningful and could be misleading to students because of a lack of comparability across institutions in different sectors, noting that a program at a proprietary institution would be subject to the regulations while the same program at a public institution might not.

Discussion: As discussed under ''Section 668.401 Scope and Purpose,'' these regulations apply to programs that are required, under the HEA, to prepare students for gainful employment in a recognized occupation in order to be eligible to participate in the title IV, HEA programs. The regulations do not establish requirements for non-GE programs.

The disclosures will be valuable even though they do not apply to all programs at all institutions because, we believe, that information about program performance and student outcomes have value in and of themselves. Prospective students will be able to evaluate the information contained in a particular program's disclosures against their own goals and reasons for pursuing postsecondary education regardless of whether they have comparable information for programs at other institutions. For example, they can consider whether a program will lead to the earnings they desire, and whether the debt that other students who attended that program incurred would be manageable for them. Further, students will have access to comparable information for all programs leading to certificates or other non-degree credentials since these programs will be subject to the disclosure requirements regardless of the institution's sector. We acknowledge that students will have less ability to compare degree programs because only degree programs offered by for-profit institutions will be subject to these regulations. We do not believe this significantly diminishes the value of the disclosures as students will nonetheless have the ability to compare programs across the for-profit sector.

Changes: None.

Comments: Some commenters asserted that requiring an institution to make the disclosures required under § 668.412 would violate the institution's First Amendment rights. They made similar arguments to those made by some commenters in connection with the student warning requirements under § 668.410.

Discussion: See ''Section 668.410 Consequences of the D/E Rates Measure'' for a discussion of the relevant law with respect to laws that mandate disclosures to consumers and potential consumers. As with the student warnings, the disclosure requirements directly advance a significant government interest—both preventing deceptive advertising about GE programs and providing consumers information about an institution's educational benefits and the outcomes of its programs. The disclosure requirements too are based on the same significant Federal interest in consumer disclosures evidenced in more than thirty years of statutory disclosure requirements for institutions that receive title IV, HEA program funds akin to the disclosures required under

[181] See 20 U.S.C. 1015a(h). Institutions must also make available, directly or indirectly through Department sites, not only tuition and fees for the three most recent academic years for which data are available, but a statement of the percentage changes in those costs over that period. 20 U.S.C. 1015a(i)(5).

these regulations.[182] As with the student warnings, the disclosures required under § 668.412 are purely factual and will not be controversial when disclosed, as institutions will have had the opportunity to challenge or appeal the disclosures calculated or determined by the Department.[183] Finally, the individual disclosure items listed in § 668.412 have been narrowly tailored to provide students and prospective students with the information the Department considers most critical in their educational decision making, and the Department will use consumer testing to inform its determination of those items it will require on the disclosure template. As with the student warnings, we believe that requiring an institution to both include the disclosure template on its program Web site and directly distribute the template to prospective students is the most effective manner of advancing our significant government interest.

The fact that Congress has already required, in section 485 of the HEA, that institutions disclose data such as completion rates and cost of attendance does not mean that the disclosures required by these regulations would cause confusion. The HEA requires disclosures about the institution as a whole, for example, the completion, graduation, and retention rates of all its students, disaggregated by such characteristics as gender, race, and type of grant or loan assistance received, but not by program. 34 CFR 668.45(a)(6). Far from creating consumer confusion, the regulations here address a significant gap in those disclosures: The characteristics of individual GE programs. Particularly for consumers who enroll in a program in order to be trained for particular occupations, this program-level information can reasonably be expected to be far more useful than information on the institution as a whole.

Changes: None.

Specific Disclosures

Comments: Several commenters raised concerns that because the 100 percent of normal time completion rate disclosure is calculated on a calendar time basis, it does not align with the time period (award years) over which the D/E rates are calculated. One of these commenters also questioned how an institution that offers programs measured in clock hours would determine the length of the program in weeks, months, or years.

Discussion: We continue to believe that completion rates should be disclosed on a calendar time basis rather than on an academic or award year basis for the purposes of the disclosures. For example, for a program that is 18 months in length, an institution will disclose the percentage of students that completed the program within 18 months. This disclosure is intended to help prospective and enrolled students understand how long it might take them to complete a program. Consumers understand time in terms of calendar years, months, and weeks much more readily than they understand time in terms of an ''academic year'' or ''award year'' as defined under the title IV, HEA program regulations. Several title IV, HEA program regulations, including the disclosure provisions of the current regulations that have been in effect since July 1, 2011, already require that institutions determine the length of a program in calendar time. In addition, institutions must provide the program length, in weeks, months, or years, for all title IV, HEA programs to NSLDS for enrollment reporting.

Changes: None.

Comments: None.

Discussion: Section 668.412(a)(4) of the proposed regulations would have required institutions to disclose the number of clock or credit hours, as applicable, necessary to complete the program. However, in some cases, competency-based and direct-assessment programs are not measured in clock or credit hours for academic purposes. Accordingly, we are adding language that would allow an institution to disclose the amount of work necessary to complete such programs in terms of a unit of measurement that is the equivalent of a clock or credit hour.

Changes: In § 668.412(a)(4), we have added the words ''or equivalent.''

Comments: Numerous commenters urged the Department to develop a standardized placement rate that would apply to all GE programs, arguing that it would provide important information to students. The commenters criticized the approach in the proposed regulations of requiring an institution to calculate a placement rate only if required to do so by its accrediting agency or State, arguing that it would lead to inconsistent disclosures because not all programs would have placement rates and because institutions would use differing methodologies. The commenters believed that developing a national placement rate methodology, even if the rate itself is not verifiable, would allow students to compare placement rates across programs and would protect against manipulation and misrepresentation of placement rates. They believed that standardizing the rate by specifying, for example, how soon after graduation a student must be employed, how long a student must be employed, and whether a student must be working in the field for which he or she was trained to be considered ''placed'' would improve the reliability and comparability of the rates.

Some of the commenters suggested alternatives to developing a standardized placement rate methodology. For instance, a few commenters suggested that the Department use the placement rate under § 668.513 for the purposes of the disclosures. Another commenter suggested that, if requiring all institutions to calculate placement rates using a standardized methodology for all of their programs would be overly burdensome for institutions not already required to calculate a placement rate, the Department should require only institutions already required to calculate a placement rate by their accrediting agency or State to disclose a placement rate calculated using a national methodology.

Discussion: We appreciate the commenters' suggestion to develop a national placement rate methodology, and we agree that this would be a useful tool for prospective and enrolled students, researchers, policymakers, and the public. However, we are not prepared at this time to include such a methodology in these regulations. We will continue to consider developing a national placement rate methodology in the future.

Changes: None.

Comments: Some commenters argued that if the Department does not establish a uniform methodology, it should require institutions subject to existing placement rate disclosure requirements from their State or accrediting agency to disclose the lowest placement rate of the rates they are required to calculate. Other commenters suggested that the Department require institutions to disclose under these regulations each of the placement rates that they are required to disclose by other entities. These commenters believed that including all of the calculated rates on the disclosure template would provide prospective students and other stakeholders a more comprehensive picture of student outcomes.

[182] See n. 242, supra.

[183] The disclosures required by § 668.412(a) consist of either statistical data elements—for example, dollar amounts, ratios, time periods—and simple facts, such as whether the program meets any educational prerequisites for obtaining a license in a given State. The disclosures are required under § 668.412 only after the institution itself has calculated the data, or the Department has calculated the data and given the institution an opportunity to challenge each such determination under § 668.413.

Discussion: The regulations in § 668.412 provide that job placement rates must be disclosed if an institution is required to calculate such rates by a State or accrediting agency. This requirement applies to all placement rate calculations that a State or accrediting agency may require.

We are revising § 668.412(a)(8) to clarify that, as in the 2011 Final Rules, an institution is required to disclose a program's placement rate if it is required by an accrediting agency or State to calculate the placement rate at the institutional level, the program level, or both. If the State or accrediting agency requirements apply only at the institutional level, under these regulations, the institution must use the required institution level methodology to calculate a program level placement rate for each of its programs. As in the 2011 Final Rules, a ''State'' is any State authority with jurisdiction over the institution, including a State court or a State agency, and the requirement to calculate a placement rate under these regulations may stem from requirements imposed by the authority directly or agreed to by the institution in an agreement with the State authority.

Changes: We have revised § 668.412(a)(8) to clarify that an institution must disclose a program's placement rate if it is required by an accrediting agency or State to calculate the placement rate either for the institution, the program, or both, using the required methodology of the State or accrediting agency.

Comments: Some commenters recommended requiring institutions to disclose the mean or the median earnings of graduates of the GE program.

Discussion: We agree with the commenters that either of the mean or median earnings of a program would be useful information for prospective students and enrolled students.

Changes: We have revised § 668.412(a)(11) to add the mean, in addition to median, earnings as a possible disclosure item to be included on the disclosure template.

Comments: We received a number of comments regarding the requirement that institutions disclose whether a program satisfies applicable professional licensure requirements and whether the program holds any necessary programmatic accreditations. Commenters recommended that we require institutions to disclose the 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 MSA rather than just whether the program satisfies them. Some commenters questioned the value of including disclosures regarding licensure, certification, and accreditation, noting that a program would not be eligible for title IV, HEA program funds if it could not certify under § 668.414 that it meets the licensure, certification, and accreditation requirements. These commenters urged the Department to maintain and strengthen the certification requirements under ''Section 668.414 Certification Requirements for GE Programs.'' They also recommended that if the certification requirements are removed, then an institution should be required to clearly and prominently disclose if a GE program does not have the necessary programmatic accreditation. These commenters asserted that where a program does meet certain requirements, it is typically easy to find disclosures indicating this information, but that it is often much more difficult to find disclosures indicating that a program does not meet particular requirements and that provide information on the consequences of failing to do so.

Several commenters recommended that the disclosures be broadened to reflect the circumstances in the location where a prospective student lives, rather than the State in which the institution is located. (See the more detailed discussion of this issue under ''Section 668.414 Certification Requirements for GE Programs.'')

Other commenters argued that the disclosure requirements are overly broad and that it would be extremely burdensome for institutions to determine whether a program holds proper programmatic accreditation. They believed that such a determination would be subjective and that it would be almost impossible to meet this requirement using a standardized template.

Some commenters asserted that, if a program does not meet the requirements in § 668.414, for consistency purposes, the institution should be required to disclose that students are unable to use title IV, HEA program funds to enroll in the program.

Some commenters suggested that the Department use consumer testing, as well as consult with other agencies and parties such as the CFPB, FTC, accrediting agencies, and State attorneys general, to specify the text and format of the programmatic accreditation disclosure. Along these lines, some commenters were concerned that describing criteria as ''required'' or ''necessary'' would be ineffective without adding clarifying text to make it clear that the programmatic accreditation is needed to qualify to take an exam without additional qualifications such as a minimum number of years working in the field of study.

Discussion: We agree with the commenters that students and prospective students should know whether a program satisfies the applicable educational prerequisites for professional licensure required by the State in which the institution is located and in any other State within the MSA in which the institution is located and whether a program is programmatically accredited. Because students may seek employment outside of their State or MSA, however, we believe it would also be helpful to students to know of any other States for which the institution has determined whether the program meets licensure and certification requirements and those States for which the institution has not made any such determination. We are revising the regulations accordingly.

We decline to require institutions to disclose the actual licensure or certification requirements that are met given the burden this would impose on institutions. We believe that the more critical information for students is whether or not the program satisfies the applicable requirements.

The disclosure requirements regarding programmatic accreditation in the proposed regulations were not overly broad, burdensome, or subjective. However, we are simplifying these requirements to make the disclosures more effective for consumers and to facilitate institutional compliance. We are revising § 668.412(a)(15) to require institutions to disclose, if required on the disclosure template, simply whether the program is programmatically accredited. Under § 668.414, an institution is already required to certify that a program 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 in which the institution is otherwise required to obtain State approval under 34 CFR 600.9. Accordingly, institutions should already have obtained these necessary programmatic accreditations. For any other programmatic accreditation, the regulations merely require disclosure of this information. It will be to an institution's benefit to disclose any programmatic accreditation it has obtained beyond the accreditation required under § 668.414. Finally, we do not agree that the proposed requirements were subjective, but we have, nonetheless, revised the

requirement to avoid reference to ''necessary'' programmatic accreditation. As revised, institutions are required only to disclose whether they have the programmatic accreditation. We are also revising the regulations to require an institution to disclose the name of the accrediting agency or agencies providing the programmatic accreditation so that students have this important information.

It is not necessary to require institutions to disclose that students are unable to use title IV, HEA program funds to enroll in a program if the program does not meet the requirements in § 668.414. If a program does not meet those requirements, then it is not considered a GE program and therefore would not be required to make any disclosures under these regulations.

As we have discussed, we will conduct consumer testing to learn more about how to convey information to students and prospective students. However, we believe that there is sufficient explanation within the description of the disclosure items for institutions to know what needs to be disclosed and when State or Federal licensing and certification requirements have been met or whether a program has been programmatically accredited.

Changes: We have revised § 668.412(a)(14) to require that an institution indicate whether the GE program meets the licensure and certification requirements of each State within the institution's MSA, and any other State in which the institution has made a determination regarding those requirements. We have also revised the regulations to require that the institution include a statement that the institution has not made a determination with respect to the licensure or certification requirements of other States not already identified. We have revised § 668.412(a)(15) to simplify the required disclosure and to require institutions to disclose, in addition to whether the program is programmatically accredited, the name of the accrediting agency.

Comments: None.

Discussion: The proposed regulations provided that the disclosure template must include a link to the Department's College Navigator Web site, or its successor site, so that students and prospective students have an easy reference to a resource that permits easy comparison among similar programs. As the Department or another Federal agency may in the future develop a better tool that serves prospective students in this regard, we are revising § 668.412(a)(16) to refer to College Navigator, its successor site, or another similar Federal resource, which would be designated by the Secretary in a notice published in the **Federal Register**.

Changes: We have added in § 668.412(a)(16) a reference to other similar Federal resource.

Comments: None.

Discussion: For the readers' convenience, we have consolidated the requirements relating to student warnings in § 668.410(a), including the requirement that institutions include the student warning on the disclosure template. Although we are removing the substantive provisions of this requirement from § 668.412(b)(2), we are adding a cross-reference to the requirement in § 668.410(a).

Changes: We have revised § 668.412(b)(2) to provide that an institution must update the disclosure template with the student warning as required under § 668.410(a)(7).

Program Web Pages and Promotional Materials

Comments: A commenter objected to the provision that would require the institution to change its Web site if the Department were to determine that the required link to the disclosure template is not sufficiently prominent, on the ground that this restricted its First Amendment rights.

Discussion: Section 668.412(c) requires an institution to ''provide a prominent, readily accessible, clear, conspicuous and direct link to the disclosure template for the program'' on various Web pages, and to ''modify'' its Web site if the Department determines that the required link is not ''prominent, readily accessible, clear, conspicuous and direct.'' This provision does not, as the commenter suggests, give the Department free rein to dictate the content of the institution's Web site in derogation of the institution's First Amendment rights. The Department's authority reaches no further than necessary to cure a failure by the institution to display the required link adequately. Requirements that consumer disclosures be ''clear and conspicuous'' are not unusual in Federal law, and the Federal Trade Commission (FTC), for example, has provided extensive guidance on how required disclosures are to be made in electronic form in a manner that meets a requirement that information be presented in a ''clear and conspicuous'' manner.[184] The Department would require any corrective action based on the kinds of considerations listed by the FTC in this guidance. We believe the regulations give the institution sufficient flexibility to design, manage, and modify, as needed, the content of its Web page as long as it makes the link sufficiently prominent. The regulations do not authorize the Department to require an institution to remove or modify any content included on the pertinent Web page. Rather, the institution is required to make only those changes needed to make the required link stand out to the consumer.

Changes: None.

Comments: Several commenters supported the provisions designed to ensure that the link to a program's disclosure template is easily found and accessible from multiple access points on a program's Web site. However, the commenters urged the Department to provide examples of a link that is ''prominent, readily accessible, clear, conspicuous, and direct.'' Some of the commenters advised conducting consumer testing with the types of individuals who are a part of the target audience for these templates, including prospective students and those advising them on which program to attend, as well as consulting with the Consumer Financial Protection Bureau (CFPB), FTC, and State attorneys general. They argued that these efforts would help to ensure that the template will be easily found and that complicated terms like ''repayment rates'' and ''default'' that consumers might not readily understand will be adequately explained. One commenter recommended that the disclosures be incorporated directly into program Web sites so that prospective students will be able to find them easily.

Discussion: We will test the format and content of the disclosure template with consumers and other relevant groups, and will provide examples of acceptable ways to make a link easy to find and accessible based on the results of that testing.

[184] FTC, .com Disclosures, March 2013. The FTC advises a party, when using a hyperlink to lead to a disclosure, to—

—Make the link obvious;

—Label the hyperlink appropriately to convey the importance, nature, and relevance of the information it leads to;

—Use hyperlink styles consistently, so consumers know when a link is available;

—Place the hyperlink as close as possible to the relevant information it qualifies and make it noticeable;

—Take consumers directly to the disclosure on the click-through page;

—Assess the effectiveness of the hyperlink by monitoring click-through rates and other information about consumer use and make changes accordingly.

Id. at ii. Available at *www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf.*

We agree that, in lieu of providing on a program's Web page a link to the disclosure template, an institution should be able to include the disclosure template itself.

Changes: We have revised § 668.412(c) to clarify that an institution may include the disclosure template or a link to the disclosure template on a program's Web page.

We have also clarified in this section that the provisions relating to a program's Web page apply without regard to whether the Web page is maintained by the institution or by a third party on the institution's behalf. To improve the organization of the regulations, we have moved the provisions relating to providing separate disclosure templates for different program locations or formats to new paragraph (f).

Comments: A few commenters provided suggestions regarding the requirement that institutions include the disclosure template or a link to the disclosure template in all promotional materials. One commenter urged the Department to increase enforcement of these requirements, noting that many institutions are not in compliance with the current regulations in § 668.6(b)(2)(i). The commenter recommended that the Department consult with the CFPB, FTC, and State attorneys general to identify effective enforcement mechanisms related to disclosures. Other commenters argued that the Department should specify that the links to the disclosure template from promotional materials should also be prominent, clear, and conspicuous, because predatory schools will hide this information by using illegible type. The commenters urged the Department to provide clear examples of links on promotional materials that would be considered acceptably prominent or clear and conspicuous, noting that the FTC and FCC have issued this type of information. Another commenter urged the Department to address situations where a student's first point of contact with a program is through a lead generating company. The commenter recommended requiring institutions to post disclosures prominently in any venue likely to serve as a student's first point of interaction with the institution, including lead generation outlets, and also to require lead generation companies that work with GE programs and institutions to provide clear and conspicuous notice to students that they should consult with the Department for information about GE programs, costs, outcomes, and other pertinent information.

Discussion: We appreciate the commenters' suggestion to consult with and learn from other enforcement-focused agencies to improve and strengthen our enforcement efforts. We note that under § 668.412(c)(2), the Secretary has the authority to require an institution to modify a Web page if it provides a link to the disclosure template that is not prominent, readily accessible, clear, conspicuous, and direct. This provision will strengthen our ability to enforce these provisions by giving us a way to prompt institutions to make changes without requiring a full program review.

We agree with the commenters who suggested requiring that links to the disclosure template from promotional materials be prominent, clear, and conspicuous. We believe that this will make it clear that institutions may not undermine the intent of this provision by including in their promotional materials a link in a size, location, or, in the case of a verbal promotion, speed that will be difficult to find or understand. We are revising the regulations to make this clear. We intend to issue guidance consistent with the guidance provided by the FTC on what we would consider to be a prominent, readily accessible, clear, conspicuous, and direct link to the disclosure template on promotional materials.

With regard to lead generating companies, we are clarifying in the regulations that institutions will be responsible for ensuring that all of their promotional materials, including those provided by a third party retained by the institution, contain the required disclosures or a direct link to the disclosure template, as required under § 668.412(d)(1).

Changes: We have revised § 668.412(d)(1) to make clear that the requirements apply to promotional materials made available to prospective students by a third party on behalf of an institution. We have also revised § 668.412(d)(1)(ii) to require that all links from promotional materials to the disclosure template be prominent, readily accessible, clear, conspicuous, and direct.

Format and Delivery

Comments: None.

Discussion: As discussed in ''Section 668.401 Scope and Purpose,'' we are simplifying the definition of ''credential level'' by treating all of an institution's undergraduate programs with the same CIP code and credential level as one ''GE program,'' without regard to program length, rather than breaking down the undergraduate credential levels according to the length of the program as we proposed in the NPRM. For the purpose of the accountability framework, we believe the benefits of reducing reporting and administrative complexity outweigh the incremental value that could be gained from distinguishing among programs of different length. For the purposes of the transparency framework, however, there are not the same issues of reporting and administrative complexity. Further, we believe that prospective students and students will benefit from having information available to make distinctions between programs of different lengths. We are revising § 668.412(f) to require institutions to provide a separate disclosure template for each length of the program. The institution will be allowed to disaggregate only those items specified in § 668.412(f)(3), which were discussed in connection with disaggregation by location and format.

Changes: We have revised § 668.412(f)(1) to require institutions to provide a separate disclosure template for each length of the program, and specified in § 668.412(f)(3) the disclosure items that may be disaggregated on the separate disclosure templates.

Comments: Some commenters argued that the Department should not permit institutions to disaggregate the disclosures that the Department calculates under § 668.413 by location or format, as provided in § 668.412(c)(2) of the proposed regulations. The commenters noted that this could undermine the Department's intention to avoid inaccuracies and distortions in the relevant data. These commenters were also concerned that if more information is disaggregated by location or format, it will be very difficult for consumers to find and understand that information. The commenters recommended that the Department test whether disaggregated data would provide better, clearer, and more accessible information and, if testing shows positive results, revise the regulations in the future to provide this option.

Other commenters recommended that the Department calculate separate rates for the disclosures under § 668.413 for different locations or formats of a program if an institution opted to distinguish its programs in reporting to the Department. As discussed under ''§ 668.411 Reporting Requirements for GE Programs,'' these commenters suggested allowing institutions to use an optional program identifier to instruct the Department to disaggregate the disclosure calculations based on

different locations or formats of a program.

Discussion: Because there are several disclosure items that may vary significantly depending on where the program is located or how it is offered, allowing institutions to disaggregate some of their disclosures will provide consumers with a more accurate picture of program costs and outcomes. For example, a program that is offered in multiple States may be subject to placement rate requirements by more than one State or accrediting agency with differing methodologies.

However, we agree with the commenters who were concerned that allowing institutions to disaggregate the disclosures calculated by the Secretary could be counterproductive. We did not intend in the proposed regulations for institutions to be able to disaggregate the disclosure rates calculated under § 668.413, and we have revised the regulations to make this more clear by specifying which of the disclosure items institutions may disaggregate. The following chart identifies the disclosure items that institutions must disaggregate if they provide separate disclosures by program, based on the length of the program or location or format, and those items that may not be disaggregated under any circumstances. We note that, regardless of whether institutions choose to disaggregate certain disclosure items, programs will still be evaluated at the six-digit OPEID, CIP code, and credential level.

If an institution disaggregates by length of the program or chooses to disaggregate by location or by format, the following disclosures must be disaggregated by length of the program, location, or format, as applicable.	Disclosure items institutions may not disaggregate by location or format under any circumstances.
§ 668.412(a)(4)—number of clock or credit hours or equivalent, as applicable	§ 668.412(a)(1)—primary occupations program prepares students to enter.
§ 668.412(a)(5)—total number of individuals enrolled in the program during the most recently completed award year.	§ 668.412(a)(2)—completion and withdrawal rates.
§ 668.412(a)(7)—total cost of tuition and fees and total cost of books, supplies, and equipment incurred for completing the program within the length of the program.	§ 668.412(a)(6)—loan repayment rate.
§ 668.412(a)(8)—program placement rate	§ 668.412(a)(10)—median loan debt.
§ 668.412(a)(9)—the percentage of individuals enrolled during the most recently completed award year that received a title IV loan or a private loan for enrollment.	§ 668.412(a)(11)—mean or median earnings.
§ 668.412(a)(14)—whether the program satisfies applicable educational prerequisites for professional licensure or certification in States within the institution's MSA or other States for which the institution has made that determination and a statement indicating that the institution has not made that determination for other States not previously identified.	§ 668.412(a)(12)—program cohort default rate.
	§ 668.412(a)(13)—annual earnings rate.
	§ 668.412(a)(15)—whether the program is programmatically accredited and the name of the accrediting agency.
	§ 668.412(a)(16)—link to College Navigator.

Changes: We have renumbered the applicable regulations. The provisions permitting an institution to publish a separate disclosure template for each location or format of a program are in § 668.412(f)(2) of the final regulations. In § 668.412(f)(3), we have specified the disclosure items that an institution must disaggregate if it uses a separate disclosure template for the length of the program or if it chooses to use separate disclosure templates based on the location or format of the program.

Comments: We received a number of suggestions for how we could improve the disclosure template from an operational perspective. For example, some of the commenters recommended adding skip logic to the template application so that fields for which there is no information to disclose can be skipped. These commenters further suggested that the template instructions should clarify that institutions should enter only information for students enrolled in programs for a given CIP code, not for students enrolled in other non-GE credential level programs in the same CIP code. The commenters also recommended the template be designed to ensure cohorts are designated appropriately and to allow institutions to enter different time increments instead of weeks, months, or years. Additionally, some commenters recommended ensuring that the template is compliant with the Americans with Disabilities Act. Another commenter argued that the disclosure template should be a ''fill-in-the-blank'' document in a common Microsoft Word file for easy incorporation into Web sites.

Discussion: We will continue to improve the template to make it easier for institutions to complete and display it as well as to make it more useful for students and prospective students. We appreciate the suggestions offered by the commenters and will consider them as we revise the template to reflect these final regulations.

We note that we have already addressed several of the recommendations in the current template. For instance, we have incorporated skip logic so that institutions will not be asked to disclose certain information if fewer than 10 students completed the applicable GE program. The template also meets all accessibility requirements. Further, we have refined our Gainful Employment Disclosure Template Quick Start Guides and the instructions within the template to provide greater clarity.

With respect to the suggestion to allow institutions more flexibility to use different increments of time besides weeks, months, and years, we note that we have selected these units intentionally to match the program lengths used for the purposes of the 150 percent Subsidized Loan Limit and NSLDS Enrollment reporting requirements. Further, we believe that calendar time is most easily understood by consumers.

Regarding the suggestion to provide a fill-in-the-blank disclosure document for institutions to complete and incorporate into their Web site, we disagree that this approach would be appropriate. We believe that the disclosure template is effective because it is standardized in its appearance. Although a Word document may be easier to use, it would result in a lack of consistency in presentation across programs. We believe that requiring an easy-to-find link and description of the disclosures, combined with our ability to work with institutions to make changes to improve the placement and visibility of the disclosures, will offset any perceived disadvantage to using an application to create the template.

Changes: None.

Comments: We received suggestions from numerous commenters on proposed § 668.412(e) regarding the direct distribution of disclosures to prospective students, particularly on how the disclosures must be provided, when the disclosures must be provided, and how institutions should document that students received the disclosures.

Several commenters provided feedback about how institutions should provide the disclosures. Specifically, some commenters opposed the proposed requirement for institutions to provide the disclosures as a stand-alone

document that student must sign, while others supported requiring the disclosures to be made clearly and directly, with text specified by the Department. Other commenters recommended exploring other means of distributing the disclosures to students, such as providing a video to each school to use or posting a video on YouTube that describes the disclosure information. Some commenters stressed the need to consult with the CFPB, FTC, and State attorneys general to determine whether prospective students should be asked to sign a document confirming that they received a copy of the disclosure template and, if so, what it should say and when and how it should be conveyed to maximize the effectiveness of the disclosures.

We also received several comments about the requirement that institutions provide the disclosures *before* a prospective student signs an enrollment agreement, completes registration, or makes a financial commitment to the institution. Some commenters recommended allowing institutions to obtain written confirmation from a student that they received a copy of the disclosure template at the same time as when the student signs an enrollment agreement, provided that new students are not penalized if they fail to attend any course sessions after the first seven days of the beginning of the term. Other commenters, in contrast, argued that the Department should specify a minimum length of time before students can enroll or make a financial commitment to the institution after receiving the disclosure template. Some of these commenters recommended instituting a minimum waiting period of three days after providing a prospective student with the disclosures before enrolling the student in order to provide students with sufficient time to review and understand the intricacies of their enrollment contracts.

Several commenters recommended allowing institutions to use a variety of means to confirm that the disclosures were provided to prospective students, including email messages, telephone calls, or other means that can be documented. The commenters argued that requiring written confirmation could complicate students' planning and would pose significant compliance challenges for institutions. The commenters also noted that students often enroll at community colleges without selecting their course of study or program and that the regulations should reflect this reality.

Discussion: We agree with the commenters who stated that it is important that prospective students receive the information in the disclosure template directly and clearly prior to enrolling in a program. We recognize, however, that not all enrollment processes will take place in person, and that hand-delivering the disclosure template as a written, stand-alone document may not be feasible in all situations. In addition, in light of commenter confusion about how the student warning and disclosure template delivery requirements worked together in the proposed regulations, we believe that it would facilitate institutional compliance if the delivery requirements aligned, to the extent possible. Accordingly, we are revising § 668.412(e) to provide that the same written delivery methods may be used to deliver the disclosure template as may be used to deliver student warnings. Specifically, the disclosure template may be provided to a prospective student or a third party acting on behalf of the prospective student by hand-delivering the disclosure template to the prospective student or third party individually or as part of a group presentation or sending the disclosure template as the only substantive content in an email to the primary email address used by the institution for communicating with the prospective student or third party about the program. As provided in the proposed regulations, the institution must obtain acknowledgement that the student or third party has received a copy of the disclosure template. If the disclosure template is delivered by hand, the acknowledgement must be in writing. If the disclosure template is sent by email to a prospective student or third party, an institution may satisfy the acknowledgement requirement through a variety of methods such as a pop-screen that asks the student to click ''continue'' or ''I understand'' before proceeding. Requiring these types of acknowledgements does not impose a significant burden on institutions or prospective students, yet provides adequate assurance that a prospective student has received important information about the program. Institutions must also maintain records of their efforts to provide the disclosure template.

We appreciate the commenters' suggestions about additional and alternative methods for delivering the disclosure template to prospective students. Although we encourage institutions to consider innovative ways to deliver information about program outcomes to students, we believe that, to facilitate institutional compliance, it is preferable to have one, clear delivery requirement in the regulations. As discussed in the NPRM and elsewhere in this document, we will conduct consumer testing to test the manner of delivery of the disclosure template. In the course of consumer testing, we may also consult with one or more of the entities recommended by the commenters.

It is critical that prospective students receive the disclosure template before enrolling in a program so that the information on the template can inform their decision about whether to enroll in the program. Although we believe it is imperative that, for programs that are subject to the student warning requirement, prospective students have a cooling-off period between receiving the warning and enrolling in the program, it is not necessary for programs that are not at risk of losing eligibility based on their D/E rates for the next award year. In all cases, students will be able to access the information on the disclosure template through the program's Web site and via its promotional materials prior to receiving the disclosure template directly from the institution.

Lastly, students must enroll in an eligible program in order to be eligible for title IV, HEA program funds. Any prospective student who has indicated that he or she intends to enroll in a GE program must be provided these disclosures.

Changes: We have revised § 668.412(e) to specify that the disclosure template may be delivered to prospective students or a third party acting on behalf of the student by hand-delivering the disclosure template to the prospective student or third party individually or as part of a group presentation or sending the disclosure template to the primary email address used by the institution for communicating with the prospective student or third party about the program. We have also revised the regulations to require that, if the disclosure template is provided by email, the template must be the only substantive content in the email, the institution must receive written or other electronic acknowledgement of the prospective student's or third party's receipt of the disclosure template, and the institution must send the disclosure template using a different address or method of delivery if the institution receives a response that the email could not be delivered. We also have revised the regulations to require institutions to maintain records of their efforts to provide the disclosure template.

Section 668.413 Calculating, Issuing, and Challenging Completion Rates, Withdrawal Rates, Repayment Rates, Median Loan Debt, Median Earnings, and Program Cohort Default Rates

Completion and Withdrawal Rates

Comments: A commenter contended that students who are excluded from the D/E rates calculation under § 668.404(e) should similarly be excluded from the completion and withdrawal rate calculations.

Discussion: In calculating the D/E rates and the repayment rate for a program, as provided in § 668.404(e) and § 668.413(b)(3)(vi) respectively, we exclude a student if he or she (1) has a loan that was in a military deferment status, (2) has a loan that may be discharged based on total and permanent disability, (3) was enrolled in another eligible program at the institution for which these rates are calculated or at another institution, or (4) died. We exclude these students because a student's ability to work and have earnings or repay a loan could be diminished under any of the circumstances listed, which could adversely affect a program's results, even though the circumstances are the result of student choices or unfortunate events that have nothing to do with program performance. Of these circumstances, only two are reasonably appropriate for holding an institution harmless for the purpose of determining completion and withdrawal rates—if the student died or became totally and permanently disabled while he or she was enrolled in the program. Therefore, as a general matter we agree to account for students in these two groups by excluding them from the completion and withdrawal rates.

However, our ability to identify these individuals is limited. For a student who borrowed, we may learn of a disability if the student has applied for or received a disability discharge of a loan. However, in instances where the individual seeks that discharge after the draft rates are calculated, or where we are not aware of a borrower's death, the institution will have to provide relevant documentation during the challenge process described in § 668.413(d) to support the exclusion. For a student who does not borrow, i.e., receives a Pell Grant only, we would not typically know if the student becomes disabled or dies while enrolled in the program. Again, the institution will have to identify and provide documentation to support the exclusion of these students during the challenge process described in § 668.413(d).

For instances where an institution identifies a student who borrowed but has not applied for a disability discharge of a loan before the draft completion and withdrawal rates are calculated, or for a student who does not borrow, we will assess whether the student may be excluded from the calculation of the rates on the basis of a medical condition by applying the standard we use in § 668.404(e)(2) to determine if the disability exclusion applies for the purpose of the D/E rates measure. Specifically, under 34 CFR 682.402(c)(5)–(6) and 34 CFR 685.213(b)(6)–(7), the Department reinstates a loan previously discharged on the basis of total and permanent disability if the borrower receives a loan after that previous loan was discharged. To be eligible for a loan, an individual must be enrolled to attend postsecondary school on at least a half-time basis. 34 CFR 685.200(a)(1). That is, the existing regulations infer that an individual who is able to attend school on at least a half-time basis is not totally and permanently disabled.

Accordingly, we are providing in § 668.413(a)(2)(ii) that a student may be excluded from the calculation of the completion rates or withdrawal rates, as applicable, if the student became totally and permanently disabled while enrolled in the program and unable to continue enrollment on at least a half-time basis.

Changes: We have revised § 668.413(b) to provide that a student who died while enrolled in the program is excluded from the enrollment cohort used for calculating completion and withdrawal rates. We have also provided in this section that a student who became totally and permanently disabled, while enrolled in the program, and who was unable to continue enrollment in school on at least a half-time basis, is excluded from the enrollment cohort used for calculating completion and withdrawal rates.

Comments: Some commenters expressed concern that disclosing four different completion rates would be excessive and potentially overwhelming for prospective students.

Discussion: Although we believe that the various completion rates would capture the experience of full-time and part-time students in a way that would be beneficial to both enrolled and prospective students, as well as institutions as they work to improve student outcomes, we agree that providing four completion rates on the disclosure template may be overwhelming for students and prospective students. Accordingly, as was the case in the NPRM, we have provided that we will use consumer testing to assess which of the disclosures, including the various options for completion and withdrawal rates, are most meaningful for students and prospective students. The disclosure template will include only those items identified by the Secretary as required disclosures for a particular year.

Changes: None.

Comments: Commenters asked the Department to clarify the methodology for calculating completion rates and withdrawal rates. Specifically, some commenters asked that we define the cohort of students for whom completion rates and withdrawal rates are calculated and address whether the cohort includes all students who received title IV, HEA program funds in a particular award year, or at any time in the past.

A number of commenters suggested that, for the purpose of calculating completion rates, we determine a student's enrollment status at a fixed point after the start of a term, rather than on the first day of the student's enrollment in the program, because many students may subsequently change their enrollment status. Another commenter suggested that institutions, and not the Department, calculate the completion and withdrawal rates that will be included in the disclosures.

Discussion: The Department will calculate the disclosure items indicated in § 668.413 in order to ensure accuracy and consistency in the calculations.

With regard to the comments about the cohort used to calculate the completion and withdrawal rates, we clarify that the ''enrollment cohort'' is comprised of all the students who began enrollment in a GE program during a particular award year, where students are those individuals receiving title IV, HEA program funds. For example, all students who began enrollment in a GE program at any time during the 2011–2012 award year comprise the enrollment cohort for that award year. The Department will track the students in the enrollment cohort to calculate a completion rate at the end of the calendar date for each measurement period, i.e., at 100, 150, 200, and 300 percent of the length of the program. We will apply the same process for the next enrollment cohort for the program—the students who began enrollment during the 2012–2013 award year—and for every subsequent enrollment cohort for that program.

However, because students may enroll in a program at any time during an award year, we will determine on a student-by-student basis whether a

student completed the program within the length of the program or the applicable multiple of the program. As an example, consider the calculation of the 100 percent of normal time completion rate associated with a two-year program for the students that enrolled in the program during the 2011–2012 award year, assuming that 100 students began enrollment in the program at various times during that award year. We will determine for each student individually whether he or she completed the program within two years by comparing for each student, the date the student began enrollment in the program to the date they completed the program. If, for example, 75 of those students completed the program within two years of when they began enrollment, the 100 percent of normal time completion rate for the 2011–2012 enrollment cohort would be 75 percent. Both completion and withdrawal rates under the regulations will be calculated using this methodology.

Changes: We have revised § 668.413(b)(1) to clarify that the enrollment cohort for an award year represents the students who began the GE program at any time during that award year.

Repayment Rate

Comments: Some commenters asked whether there is a distinction made for the repayment rate calculation cohort period for medical or dental programs that require a residency.

Discussion: We see no reason to make a distinction in the cohort period for medical and dental programs that require a residency. For the D/E rates calculation, we adjust the cohort period because we would not expect students, while in a residency or other type of required training, to have earnings at a level that is reflective of the training they received. In comparison, we do expect borrowers to repay their loans while in residency or other training. Consequently, modifying the cohort period would not be appropriate.

Changes: None.

Comments: With respect to the repayment rate methodology in § 668.413(b)(3), some commenters objected to the breadth of the exclusion for students enrolled in another eligible program at the institution or another institution, specifically noting the absence of any requirement that the institution provide documentation to validate the exclusion. On the other hand, some commenters supported the exclusion for borrowers currently enrolled in an eligible program regardless of whether it is the same program as that in which they originally enrolled, and for borrowers in military deferment. These commenters suggested expanding the exclusion to include other borrowers in deferment status, other than deferments for unemployment or economic hardship, including students working in the Peace Corps.

Discussion: The repayment rate disclosure will show consumers how effectively those who are expected to repay their loans are actually repaying them and, from that information, allow consumers to evaluate program performance. We exclude from the repayment rate calculation, as well as the D/E rates calculation, students who are in school or in military deferment because those statuses are reflective of individual choices that have little to do with the effectiveness of the program (see § 668.412(a)(13) and § 668.404(d)(3)). We decline to add an exclusion for borrowers in the Peace Corps because there is no longer a separate deferment in the title IV, HEA program regulations for such borrowers, and, therefore, there would be no way to easily identify these students from other students with an economic hardship deferment. As we do not expect the number of borrowers with an economic hardship deferment due to Peace Corps service to be significant, we believe the advantage to consumers of including all students in economic hardship status in the repayment rate calculation greatly outweighs any benefit from excluding all such students because they may include Peace Corps volunteers.

Changes: None.

Comments: Some commenters asserted that rehabilitated loans, which are defaulted loans subsequently paid in full or defaulted loans that returned to active repayment status, should not be treated as defaulted loans for the purpose of calculating loan repayment rates.

Discussion: We disagree that rehabilitated loans that were once in default should not be considered defaulted for the purpose of the repayment rate calculation. The repayment rate is intended to assess whether a program's borrowers are able to manage their debt. A borrower's default on a loan at some previous time, even if the loan is no longer in default status, indicates that the borrower was unable to manage his or her debt burden. This information should be reflected in a program's repayment rate.

Changes: None.

Comments: One commenter contended that the determination of the outstanding balance for each of a borrower's loans at the beginning and end of the award year is unduly complicated because of the need to prorate payments for the reporting of consolidated or multiple loans in a borrower's loan profile. Further, the commenter suggested that measurement of active repayment of a borrower's entire portfolio, possibly using a ''weighted'' method of calculating a student's loan portfolio based on the amount of debt, would be more accurate and solve the potential problem of negative outcomes of simple proration for those earning higher degrees.

Discussion: We do not believe that the loan repayment rate calculations are overly complex. If a borrower has made a payment sufficient to reduce the outstanding balance of a consolidation loan during the measurement period, the borrower is included as a borrower in active repayment. A consolidation loan may have been used to pay off one or more original loans obtained for the program being measured, for that program and other programs offered by the same institution, or for that program and programs offered by other institutions. There is no practicable way to allocate payments made by a borrower among the components of the consolidation debt corresponding to the original loans, and the commenter proposed no reasonable basis to allocate payments made among a borrower's original loan and other loans associated with other programs or other institutions. Regardless, the Department, and not the institution, calculates a program's repayment rate using data already reported by the institution, so the burden of calculating the rates will fall on the Department, rather than the institution.

Changes: None.

Comments: Some commenters asserted that a borrower making full payments in an income-driven repayment plan, such as Income Based Repayment, Income Contingent Repayment, and Pay As You Earn, should count positively towards the program's repayment rate by being included in the numerator of the calculation even if the borrower's principal year-end balance is not reduced. These commenters argued that because the Department has made income-driven repayment plans available to borrowers to assist them in managing their debt, programs should not be penalized if a student takes advantage of such a plan as the institution does not have control over whether the plan will result in negative amortization.

Discussion: The loan repayment rate presents a simple measurement: the proportion of borrowers who are

expected to be repaying their loans during a given year who are actually paying enough during that year to owe less at the end of the year than they owed at the start of the year (i.e. paid all interest and at least one dollar of principal). Income-driven plans are available to assist borrowers whose loan debt in relation to their income places them in a ''partial financial hardship''; a program where many borrowers are forced to enroll in such plans is not leading to good outcomes. As a result, a repayment rate disclosure that treated such borrowers as in ''active repayment'' would not provide meaningful information to consumers about a program's student outcomes and, worse, may give prospective students unrealistic expectations about the likely outcomes of their investment in such a program.

Changes: None.

Program Cohort Default Rate

Comments: None.

Discussion: As discussed in ''Section 668.403 Gainful Employment Program Framework,'' program cohort default rates will be used in the regulations as a potential disclosure under § 668.412 only, rather than as a standard for determining program eligibility. To reflect that change, we are removing from §§ 668.407, 668.408, and 668.409 the provisions that established that the Secretary will use the methodology and procedures, including challenge procedures, in subpart R to calculate program cohort default rates; the provisions relating to the notice to institutions of their draft program cohort default rates; and the provisions relating to the issuance and publication of an official program cohort default rate.

Changes: We have revised §§ 668.413(b)–(f) to: Establish that the Secretary will use the methodology and procedures, including challenge procedures, in subpart R to calculate program cohort default rates; and to incorporate provisions relating to the notice to institutions of their draft program cohort default rates and relating to the issuance and publication of an official program cohort default rate.

Comments: None.

Discussion: As discussed in ''Section 668.403 Gainful Employment Program Framework,'' program cohort default rates will be used in the regulations as a potential disclosure under § 668.412 only, rather than as a standard for determining program eligibility, and we will use the procedures in subpart R to calculate the rate. However, certain sections of subpart R pertained to eligibility and are not necessary for these final regulations and we are removing those sections from the final regulations. Specifically, § 668.506 of subpart R addressed the effect of a program cohort default rate on the continued eligibility of a program. Other provisions in subpart R governed challenges to the accuracy and completeness of the data used to calculate program cohort default rates and, additionally, appeals of results that might have led to loss of program eligibility. With respect to appeals, § 668.513 would have permitted an institution to appeal a loss of eligibility based on academic success for disadvantaged students. Section 668.514 would have permitted an institution to appeal a loss of eligibility based on the number of students who borrowed title IV loans as a percentage of the total number of individuals enrolled in the program. Section 668.515 would have permitted an institution to appeal a loss of eligibility if at least two of the three program cohort default rates are calculated as average rates and would be less than 30 percent if calculated for the fiscal year alone. These provisions are being removed from the final regulations.

The provisions that remain serve the purpose of ensuring that the calculation process results in an accurate rate.

Changes: We have removed and reserved §§ 668.506, 668.513, 668.514, and 668.515 of subpart R.

Comments: One commenter objected to proposed § 668.504(c)(1), which would allow an institution to submit a participation rate index challenge only to a draft program cohort default rate that could result in loss of eligibility of a program. The commenter believed that institutions should be allowed to assert a participation rate index challenge to any draft rate, because a successful assertion of a challenge, which would be relatively inexpensive and readily demonstrated, would eliminate the need to pursue more complicated, detailed, and costly challenges on other grounds to the draft and final program cohort default rates.

Discussion: As previously stated, in these regulations we are using program cohort default rates only as a disclosure. We therefore retain only those provisions of proposed subpart R that do not relate to loss of eligibility. Challenges based on a participation rate index would not have changed the calculation of the official rate, but would have only relieved the institution from loss of eligibility for the affected program. Because program cohort default rates will not affect eligibility, there is no reason to adopt a procedure that affected only whether the program would lose eligibility. The rate itself is useful information for consumers, and should be disclosed.

Changes: We have removed and reserved § 668.504(c).

Comments: None.

Discussion: Proposed § 668.502(a) provided that we would begin the program cohort default rate calculation process by counting whether at least 30 borrowers entered repayment in the fiscal year at issue; if fewer than 30 did so, we then counted whether at least 30 borrowers entered repayment in that year and the two preceding years. This approach conformed to institutional CDR requirements but is no longer applicable given that we are not adopting the program cohort default rate as an accountability metric. Because the rate will be used only as a disclosure, we will apply the minimum n-size of 10 that, as discussed in ''Section 668.412 Disclosure Requirements for GE Programs,'' we have established for all of the disclosure items.

This change requires a number of conforming changes to various provisions in subpart R. We are revising §§ 668.502, 668.504, and 668.516 to reflect the use of a minimum cohort size of 10 for the purposes of calculating, challenging, and appealing program cohort default rates.

Changes: We have revised § 668.502(a) to provide for the Department to calculate a program cohort default rate for a program as long as that rate is based on a cohort of 10 or more borrowers. We also have revised § 668.502(d) to reflect the use of cohorts with 10 or more borrowers in the calculation and § 668.502(d)(2) describes how we will calculate the rate if there are fewer than 10 borrowers in a cohort for a fiscal year. We have made conforming changes in § 668.504(a)(2) regarding draft program cohort default rates.

We have revised § 668.516 to describe our determination of an official program cohort default rate more accurately and to provide that an institution may not disclose an official program cohort default rate under § 668.412(a)(12) if the number of borrowers in the applicable cohorts is fewer than 10. As revised, § 668.516 explains that we notify the institution if we determine that the applicable cohort has fallen to fewer than 10.

Comments: None.

Discussion: In considering the changes to subpart R previously described, we determined that as proposed, the regulations did not explicitly address how the Department, in the first two years that rates are calculated under the regulations, would

calculate a program's rate where the number of borrowers in the fiscal year was fewer than 10 and for which the Department would include in the calculation borrowers from the prior two fiscal years' cohorts. In turn, the regulations did not explicitly address how an institution would challenge a program's draft cohort default rate in these circumstances. Specifically, an institution would not have had an opportunity to challenge—at the draft rate stage—the data on borrowers from the prior two years, because the Department would not have calculated rates for those years. We are, therefore, revising § 668.502(d)(2) and § 668.504(a)(2) to clarify how this process will work to allow an opportunity to make that challenge.

Section 668.502(d)(2), as revised in these regulations, sets forth how the Department will calculate a program's cohort default rate if there are fewer than 10 borrowers. Section 668.502(d)(2)(i) provides that, in the first two years that we calculate a program's cohort default rate, we include in our calculation the number of borrowers in that cohort and in the two most recent prior cohorts for which we have relevant data. Under § 668.502(d)(2)(ii), for other fiscal years, we include in our calculation the number of borrowers in the program cohort and in the two most recent program cohorts as previously calculated by the Department.

We are revising § 668.504(a)(2) to provide that, except as set forth in § 668.502(d)(2)(i), the draft cohort default rate of a program is always calculated using data for that fiscal year alone.

With these changes, we make it clear that the challenge process under § 668.504(b) includes challenges with respect to rates with fewer than 10 borrowers in the first two years for which the Department uses data from the two most recent prior fiscal years.

Changes: We have revised § 668.502(d)(2), and made conforming changes to § 668.504(a)(2), to describe how the Department, in the first two years in which it calculates a program's cohort default rates under these regulations, will calculate a rate for a program that has fewer than 10 borrowers in the fiscal year being measured and for which the Department uses data on borrowers from the prior two years to calculate the rate and to clarify that an institution may challenge that data once it receives its draft program cohort default rate or official program cohort default rate.

Comments: Some commenters objected to the adoption of institution level CDR rules in determining the cohort default rate of a program on the grounds that those rules measured only the percentage of borrowers who actually defaulted on their loans within the three-year period, without regard to the number who would likely have defaulted but were placed, often by reason of extensive efforts by the institution, in deferment or forbearance status so that default would likely be forestalled until after the close of the three-year period. These rules, they asserted, made CDR an inadequate measure of the repayment performance of the affected borrowers, and the commenters urged the Department to measure program cohort default rates using only the performance of borrowers who entered into repayment status and were not in deferment or forbearance status for a significant portion of the three-year period.

Discussion: As explained in the NPRM and in this preamble, we will calculate the program cohort default rate using the process and standards already used to calculate institutional cohort default rates, in part because institutions are already familiar with those procedures. We do not believe it would be appropriate to change the calculation method to exclude those in deferment or forbearance because it would lead to inconsistency between institutional CDR and program cohort default rates which could be confusing to consumers.

Changes: None.

Comments: One commenter asserted that in instances in which a cohort of borrowers entering repayment is very small, default by one or two borrowers may produce a failing program cohort default rate but that rate would not be meaningful information for consumers.

Discussion: As discussed, we agree that disclosures based on cohorts consisting of fewer than ten borrowers are not justified for privacy concerns, but we see no reason, and the commenter did not offer one, that a rate based on that number would not be useful to consumers. We note that each of the required disclosures must be made if the cohort on which the data are based includes 10 or more individuals, and that rate or data could always be affected by actions of a very small number. Nevertheless, we consider all that data useful to the consumer, and see no reason to designate some disclosures based on small numbers as useful, but others, such as default rate, as uninformative. An institution that considers a program cohort default rate to be misleading because the number of borrowers involved was small is free to provide that explanation to prospective students.

Changes: None.

Comments: One commenter noted that proposed § 668.507 would give the Department discretion whether to include in the program cohort default rate calculation debt incurred for a GE program offered by another institution if the two institutions were under common ownership and control, but gave no indication of the conditions that would prompt the Department to do so. The commenter suggested that debt incurred at institutions under common ownership and control be included in the calculation for a program only if the institutions have the same accreditation and admission standards. The commenter contended that institutions with different accreditation and admission standards are so significantly independent that transfers from one to the other are not likely to be arranged in order to manipulate program cohort default rates, and that the regulations should not penalize an institution to which a borrower transfers in order to pursue a more advanced degree by attributing defaults at the institution from which the student is transferring to the institution to which the student is transferring.

Discussion: We believe that § 668.503, which governs the determination of program cohort default rates for programs that have undergone a change in status such as a merger or acquisition, addresses situations in which debt will ordinarily be combined to calculate the rate. We also believe that, by using program cohort default rate as a disclosure only, rather than as an accountability metric, there is less incentive to attempt to manipulate this rate. We therefore do not believe further changes to the regulations are necessary.

Changes: None.

General

Comments: Some commenters expressed concern regarding the minimum size of a cohort for disclosure of repayment rates.

Discussion: With respect to the concerns raised by the commenters, for the 2011 Final Rules, the Department provided sub-regulatory guidance to institutions instructing them not to disclose various data for a program if fewer than 10 students completed the program in the most recently completed award year. We believe this guidance continues to provide a useful bright line, and it remains in effect. As discussed in ''Section 668.412 Disclosure Requirements for GE Programs,'' because of privacy concerns, an institution may not disclose data

described in § 668.413 if that data is derived from a cohort of fewer than 10 students, and, for those data calculated and issued by the Department, the Department does not issue or make public any data it calculates from such a cohort.

Changes: We have added paragraph (g) to § 668.413 to provide that we do not publish determinations made by the Department under § 668.413, and an institution may not disclose a rate or amount determined under that section, if the determination is based on a cohort of fewer than ten students.

Section 668.414 Certification Requirements for GE Programs

Comments: Several commenters supported the proposed program certification requirements because, they believed, the requirements are streamlined, clear, and feasible to implement.

Discussion: We appreciate the commenters' support.

Changes: None.

Comments: A number of commenters objected to the program certification requirements. They contended that States, accrediting agencies, and the Department serve different roles, and that requiring certifications would be inconsistent with that framework. The commenters asserted it would be more appropriate for the Department to rely on States and accreditors to monitor whether institutions have obtained the necessary program approvals from them because independent monitoring by the Department would be derivative and duplicative of their efforts. The commenters also argued that program quality and outcomes are more appropriately evaluated by an institutional accreditor and, similarly, that determining whether a program meets a State's standards should be the responsibility of the State. Finally, one commenter stated that the certification requirements would contravene the HEA's recognition requirements with respect to program accreditors.

Discussion: The Department agrees that accrediting agencies and States play important roles in approving institutions to operate and offer programs and providing ongoing oversight of whether institutions and programs meet those State and accrediting requirements. However, this may not always guarantee that a program meets all minimum educational standards for students to obtain employment in the occupation the institution identified as being associated with that training. For example, in some States, for some types of programs, institutions are allowed to offer a program even if it does not meet the requirements for licensure or certification in that State. In such instances, under the regulations, for a program to be eligible for title IV, HEA program funds, the program will be required to meet State licensure, certification, and accreditation standards for the occupations the institution identifies for the program where it would not have had to in the absence of the certification requirements.

Even where the certification requirements are partly duplicative of State and accreditor efforts, there is no conflict with the HEA to require an institution to verify that a program meets applicable State and accrediting standards in light of the Department's responsibility to protect students and ensure that title IV, HEA program funds are used for proper purposes, in this case, to prepare students for gainful employment in a recognized occupation. We believe there is minimal burden associated with providing this information to the Department.

The certification requirements have the added benefit of creating an enforcement mechanism for the Department to take action if a required approval has been lost, or if a certification that was provided was false. Further, Federal and State law enforcement agencies may be able to prosecute any misrepresentations made by institutions in their own investigations and enforcement actions.

Changes: None.

Comments: One commenter, while noting support for the proposed provisions, suggested that institutions that do not satisfy all State or Federal program-level accrediting and licensing requirements should not be eligible to participate in the title IV, HEA programs.

Discussion: Institutions will be required to ensure that the programs they offer have the necessary Federal, State, and accrediting agency approvals to meet the requirements for the jobs associated with those programs. If a program does not meet these requirements, the institution will have to either obtain the necessary approvals or risk losing title IV, HEA program eligibility.

Changes: None.

Comments: A number of commenters asserted that the initial and continuing reporting requirements to update the certifications would be burdensome. They noted that for existing programs, institutions would be required to submit transitional certifications and reporting covering several years of data at the same time. The commenters were concerned that institutions would make unintentional errors for which they would be held liable. They were also concerned about how the implementation of the regulations would affect the timing of an institution's PPA recertification.

Discussion: The Department estimates that there will be minimal additional administrative burden associated with the certification requirements. We believe that any burden is outweighed by the benefits of the requirements which, as described previously, will help ensure that programs meet minimum standards for students to obtain employment in the occupations for which they receive training. Furthermore, after the initial period where institutions will be required to submit transitional certifications for existing programs by December 31st of the year that the regulations take effect, the continuing certification procedure will be combined and synchronized with the existing PPA recertification process to minimize any increased institutional burden and facilitate compliance. This will have no bearing on the timing of an institution's PPA recertification process. The only time an institution will need to update its existing program certification separately from the PPA recertification process will be when there is a change in the program or in its approvals that makes the existing program certification no longer accurate. Institutions will be required under 34 CFR 600.21 to update the program certification within 10 days of such a change. Regarding the commenter's concern that the certification requirements will increase institutions' possible liability and exposure to litigation, these requirements could affect complaints that are based upon violations of the new requirements but, in other cases, could also reduce complaints as students and prospective students receive better and more transparent information.

Changes: We have revised § 668.14(b) to provide that an institution must update a program certification within 10 days of any change in the program or in its approvals that makes the existing certification no longer accurate. We have also made a conforming change to § 600.21 to include program certifications in the list of items that an institution must update within 10 days.

Comments: One commenter suggested that the Department clarify in the regulations how the certifications would work together with the debt measures to establish that a program meets all of the gainful employment standards. Another commenter requested assurances that

the existing certification requirements would continue to apply even after the D/E rates measure is implemented.

Discussion: The certification requirements are an independent pillar of the accountability framework of these regulations that complement the metrics-based standards. To determine whether a program provides training that prepares students for gainful employment as required by the HEA, these regulations provide procedures to establish a program's eligibility and to measure its outcomes on a continuing basis. Accordingly, the certification requirements will continue to apply after the D/E rates measure becomes operational.

Changes: None.

Comments: Some commenters stated that providing certifications for GE programs would provide an important baseline for key information about a program, and suggested that the certification requirements should be expanded. In this regard, commenters argued that the Department should require institutions to affirm that programs lead to gainful employment for their graduates, add additional certification requirements for institutions with failing or zone programs, or require institutions that do not meet the certification requirements to pay monetary penalties.

Discussion: An expanded certification process as suggested by the commenters is unnecessary in light of the requirements already provided in the regulations. An important goal of the certification requirements is to ensure that institutions assess on an ongoing basis whether their programs meet all required Federal, State, and accrediting standards. Furthermore, we do not believe that additional certification requirements for institutions with failing or zone programs are needed, because the Department has existing procedures that consider an institution's financial responsibility and administrative capability at least annually, and an institution with demonstrated problems, such as having failing or zone programs under the regulations, may be subject to additional restrictions and oversight. Consequently, an expanded certification process would add little to the existing requirements.

Changes: None.

Comments: One commenter recommended that we require institutions to provide separate certifications for programs by location.

Discussion: If a program does not meet the certification requirements in any State where an institution is located, then the program as a whole would be considered deficient and could not be certified. Consequently, we do not believe it is necessary to require separate certifications.

Changes: None.

Comments: Some commenters argued that institutions should be required to certify that their programs provide students with access to information about the licensure and certifications required by employers, or that meet industry standards nationwide, and provide an explanation to students of the certification options available in a particular field. The commenters suggested that the provision of such information by institutions would demonstrate that they are sufficiently aware of requirements for employment in the industries for which they are preparing students to work. Similarly, some commenters suggested that the regulations should require institutions to provide new data or information to students prior to enrolling to help them understand the certificates or licenses that are needed for a particular occupation so that the students can make better decisions. On the other hand, one commenter asserted that institutions should not be required to identify the licensure and certifications required by all employers.

Some commenters suggested more information about how a program provides training that prepares students for gainful employment should be included in the transitional certification along with an affirmation signed by the senior executive at the institution. Specifically, the commenters asserted that institutions should provide affirmations about job outcomes for programs subject to the transitional certification requirements because those programs are already participating in the title IV, HEA programs and information about their student outcomes is available.

Discussion: We appreciate the suggestion that more detailed information should be required as a part of the certifications, but believe that the regulations strike an appropriate balance between affirming that a program meets certain requirements while not creating ambiguity or increasing burden in providing more detailed statements about the program's outcomes. Requiring institutions to certify that their programs provide the training necessary to obtain certifications expected by employers or industry organizations would be impractical as preferences will likely vary among employers and organizations. Without objective and reliable standards, such as those set by State or Federal agencies like the Federal Aviation Administration or the Department of Transportation, or by accrediting agencies, the Department would be unable to enforce such a requirement.

Further, we do not believe that requiring institutions to provide additional information in their certifications would further the objectives of these provisions as the certifications are limited in scope to whether a program meets certain objective minimum standards. Further, we believe that the D/E rates measure and required disclosures address the commenter's suggestions.

Changes: None.

Comments: Some commenters made suggestions regarding the Department's approval of institutions' certifications. Specifically, one commenter asserted that the Department should give special consideration to whether programs that are significantly longer or require a higher credential than comparable programs should be approved.

Discussion: Because the Department does not review program content, it cannot make determinations about the appropriate credential level for a particular program. With respect to program length, additional requirements are not necessary because existing regulations at § 668.14(b)(26) already provide that a program must demonstrate a reasonable relationship between the length of the program and entry-level requirements for employment in the occupation for which the program provides training. Under § 668.14(b)(26), the relationship is considered to be reasonable if the number of clock hours of the program does not exceed by more than 50 percent the minimum number of clock hours required for training that has been established by the State in which the program is located. Also, where it is unclear whether a program's length is excessive, the Department may check with the applicable State or accrediting agency to resolve the issue.

Changes: None.

Comments: Some commenters expressed concern that, for new programs, the proposed regulations would require an application only in those instances where the new program is the same, or substantially similar to, a failing or ineligible program offered by the same institution. These commenters noted that an institution could circumvent the certification process by misrepresenting a new program as not substantially similar to the failing, zone, or ineligible program.

Discussion: An institution that offered a program that lost eligibility, or that voluntarily discontinued a program

when it was failing or in the zone under the D/E rates measure, may not offer a new program that is substantially similar to the ineligible, zone, or discontinued program for three years. We recognize the possibility that some institutions might make minor changes to a program and represent that the new program is not substantially similar to its predecessor. To address the commenter's concern, we are removing the definition of ''substantially similar'' from the definition of CIP code, and establishing in § 668.410 that two programs are substantially similar if they share a four-digit CIP code. We believe that precluding institutions from establishing new programs within the same four-digit CIP code will deter institutions from making small changes to a program solely for the purpose of representing that the new program is not substantially similar to the discontinued program, other than in instances where a program could be associated with a range of CIP codes, as suggested by the commenters. To address this concern that a similar program could be established using a different four-digit CIP code, we are revising § 668.414(d)(4) to require an institution that is establishing a new program to explain in the program certification that is submitted to the Department how the new program is different from any program the institution offered that became ineligible or was voluntarily discontinued within the previous three years. The institution must also identify a CIP code for the new program. We will presume that a new program is not substantially similar to the ineligible or discontinued program if it does not share a four-digit CIP code with the other program. The certification and explanation reported by the institution may be reviewed on a case-by-case basis to determine if the two programs are not substantially similar. A program established in contravention of these provisions would be considered ineligible and the institution would be required to return the title IV, HEA program funds received for that program.

We believe that these changes will make it more difficult for an institution to continue to offer the same, or a similar program and claim that it is not substantially similar to an ineligible or discontinued program, while allowing an institution to establish new programs in different areas that may better serve their students.

Changes: We have revised the certification requirements to include a requirement in § 668.414(d)(4) that an institution affirm in its certification that, and provide an explanation of how, a new program is not substantially similar to a program that became ineligible or was a zone or failing program that was voluntarily discontinued in the previous three years.

Comments: Several commenters urged the Department to create an approval process for all new programs before an institution could start enrolling students who receive title IV, HEA program funds to mitigate the risk of students incurring significant amounts of debt in programs unlikely to pass the D/E rates measure. One commenter suggested that limiting certifications to the PPA is not sufficient, and that applications for all new program approvals should require certification regarding licensing and certification.

While some commenters said approval requirements should apply to all new programs, other commenters suggested that an institution should be required to seek new program approval only if it had one or more failing programs at that time under the D/E rates measure, regardless of their similarity to the new program. Other commenters expressed the view that an institution that wished to build upon a successful existing program, such as by adding a graduate-level program, should be exempted from any new program approval process, or be subject to a streamlined approval process.

As a part of a new program approval requirement, some commenters proposed that institutions should have to certify that they conducted a reasoned analysis of the expected debt and earnings of graduates, as well as expected completion rates, and add that information to their PPA certification before starting any new program.

Discussion: The Department did not propose and is not including in the final regulations an approval process for new programs. As previously stated, we believe that the D/E rates measure is the best measure of whether a program prepares students for gainful employment. While we agree that it is important for institutions to conduct a reasoned analysis of expected program outcomes such as the expected debt and earnings of graduates, or expected completion rates, we will not require institutions to submit this information or certify that it was conducted because there is no basis upon which the Department could assess such information to determine whether the analysis was sufficient or that the analysis indicates that the program will indeed pass the D/E rates measure in the future. Without this ability, we do not believe adding such requirements would be useful.

Changes: None.

Comments: To increase transparency, some commenters suggested that an institution's PPA, or the portions related to its GE programs, should be published on a public Web site to provide the public and policy makers the opportunity to assess the institution's analysis, discussed in the previous comment, that the program would meet the D/E rates. They argued that this additional reporting should not be particularly burdensome for an institution because it should already be conducting such analysis. They also argued that the Department should strengthen its procedures to verify the accuracy and veracity of the information contained in a PPA, arguing that, otherwise, an institutional officer providing a false certification would have little risk of being identified and held accountable.

Discussion: As the Department is not requiring the analysis of potential debt and earnings outcomes as requested by the commenter, we are also declining to publish institutions' PPAs. As discussed in ''Section 668.412 Disclosure Requirements for GE Programs,'' there also is little variation in the PPA and the disclosure and certification requirements already provide sufficient protections for students. Similarly, it would not be beneficial to modify procedures to verify the information contained in institutions' PPAs. As with any representation made by an institution, the Department has the authority to investigate and take action against an institution that fraudulently misrepresents information in its PPA when those issues are identified during audits, program reviews, or when investigating complaints about an institution or program.

Changes: None.

Comments: Several commenters argued that six months is an insufficient amount of time for institutions to submit transitional certifications after the regulations become effective. They recommended increasing the time period or eliminating the transitional certifications altogether and require only that institutions provide the certifications as a part of their periodic PPA recertification.

Discussion: The Department understands that there is some administrative burden associated with submitting the transitional program certifications. However, programs should already be meeting the minimum requirements regarding accreditation, licensure, and certification, so the additional burden on institutions of providing this information should be minimal. This reporting burden is outweighed by the importance of

promptly confirming after the regulations become effective that all programs meet the certification requirements. This will reduce the potential harm to students who become enrolled, or continued harm to students already enrolled, in programs that do not meet the minimum standards. If we were to wait until PPA recertification, a significant amount of time could pass before a program's deficiencies would come to light during which students would continue to accumulate debt and exhaust title IV, HEA program eligibility in a program providing insufficient preparation.

Changes: None.

Comments: Some commenters argued that institutions offering a program in multiple States might not meet the licensure, certification, and accreditation requirements in each State. They suggested that institutions should be prohibited from enrolling students in a State where these requirements are not met. Other commenters recommended requiring institutions to disclose to students when a program does not meet the applicable certification requirements for the State where the student is located, but that the student should still be able to choose to enroll in that program. Several commenters asserted that a student might still choose to enroll in such a program because the student intends to move to, and work in, a different State where the program would meet any applicable certification requirements.

Some commenters criticized the requirements of the proposed regulations to obtain necessary programmatic accreditation and State-level approvals where the MSA within which they operate spans multiple States. Several commenters were concerned that it would be difficult for programs to meet the requirements of all of these States. The commenters stated that the State-MSA requirement could lead to confusion in a large MSA where an institution might not be aware of which governmental agencies have requirements and of differing requirements between States. One commenter suggested that the MSA requirement would be contrary to provisions in OMB Bulletin 13–01. Another commenter asserted that the State-MSA requirement would limit an institution's ability to offer programs specialized to meet local labor market needs.

Some commenters argued that that the use of MSAs was not appropriate for online programs, because they are not bound by physical location. Other commenters asserted that the physical location of students should determine the relevant States whose requirements must be met rather than the physical location of institutions. They suggested that the certifications should apply to any State in which a sizeable number or plurality of students are enrolled.

Discussion: We do not agree that it is too difficult for an institution to identify all of the governmental agencies that have licensure, certification, and accreditation requirements in the States that intersect with the MSA where a program is located. It is an institution's responsibility to be aware of the requirements in the States where its students are likely to seek employment and ensure that their programs meet those requirements. However, we recognize that in some cases, State requirements may conflict in such a way that it would be impossible to concurrently meet the requirements of multiple States. For example, Ohio and Kentucky, which are a part of the Cincinnati, Ohio MSA, require nail technicians to receive a minimum of 200 and 600 clock hours of training, respectively, in order to obtain a license. However, the regulations at § 668.14(b)(26) provide that the length of a program cannot exceed 150 percent of the minimum number of clock hours of training established by a State for the relevant occupation. In this case, a nail technician program in Cincinnati could not concurrently meet the requirements for both Ohio and Kentucky because a program length beyond 300 hours would violate § 668.14(b)(26), jeopardizing the program's title IV, HEA program eligibility. As a result, we are revising the regulations to remove the MSA certification requirement. However, institutions will still be required under § 668.412(a)(14) to disclose whether a program meets applicable requirements in each State in the institution's MSA.

We are addressing this potential conflict between different State requirements within an institution's MSA by eliminating the proposal for program certifications to cover the States within an MSA, and requiring instead that the institution provide applicable program certifications in any State where the institution is otherwise required to obtain State approval under 34 CFR 600.9.

The current State authorization regulations apply to States where an institution has a physical location, and the program certification requirements also apply in those States so those two sets of requirements are aligned. If any changes are made in the future to extend the State authorization requirements in 34 CFR 600.9 to apply in other States, we intend the program certification requirements to remain aligned. Since institutions will have to ensure they maintain appropriate State approvals under the State authorization regulations, we anticipate that institutions will actively address any potential conflicts at that time. We believe that the requirements for the applicable program certifications should also be provided for those States. This will ensure a program and the institution that provides the program have the necessary State approvals for purposes of the Title IV, HEA programs. Linking the State certification requirements in § 668.414(d)(2) with the State authorization regulations in § 600.9 to identify States where institutions must obtain the applicable approvals benefits students and prospective students because the State authorization requirements include additional student protections for the students enrolled in the programs for which certifications would be required.

While institutions will not be prohibited from enrolling students in a program that does not meet the requirements of any particular State, a program that does not meet the applicable requirements in the State where it is located for the jobs for which it trains students will be ineligible to receive title IV, HEA program funds. As discussed in ''Section 668.412 Disclosure Requirements for GE Programs,'' institutions may be required to include on a program's disclosure template whether the program meets the licensure, certification, and accreditation requirements of States, in addition to the States in the institution's MSA, for which the institution has made a determination regarding those requirements so that students who intend to seek employment in those other States can consider this information before enrolling in the program.

Changes: We have removed from § 668.414 the requirement that an institution's certification regarding programmatic accreditation and licensure and certification must be made with respect to each State that intersects with the program's MSA. We have revised this section to require that the institution's program certification is required in any State in which the institution is otherwise required to obtain State approval under 34 CFR 600.9.

Section 668.415 Severability

Comments: One commenter recommended that we omit the provisions of § 668.415 regarding the severability of the provisions of subpart Q. Specifically, the commenter argued

that the provisions of the regulations are too intertwined such that if a court found any part of the regulations invalid, it would not allow the remaining provisions to stand. In that event, the commenter argued, the remaining provisions would not serve the Department's intent and the rulemaking process would be undermined.

Discussion: We believe that the provisions of subpart Q are severable. Each provision of subpart Q serves a distinct purpose within the accountability and transparency frameworks and provides value to students, prospective students, and their families and the public, taxpayers, and the Government that is separate from, and in addition to, the value provided by the other provisions. Although we recognize that severability is an issue to be decided by a court, § 668.415 makes clear our intent that the provisions of subpart Q operate independently and the potential invalidity of one or more provisions should not affect the remainder of the provisions.[185]

Changes: None.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action will have an annual effect on the economy of more than $100 million because the estimated Federal student aid, institutional revenues, and instructional expenses associated with students that drop out of postsecondary education, transfer, or remain in programs that lose eligibility for title IV, HEA funds as a result of the regulations is over $100 million on an annualized basis. The estimated annualized costs and transfers associated with the regulations are provided in the ''Accounting Statement'' section of this Regulatory Impact Analysis (RIA). Therefore, this final action is ''economically significant'' and subject to review by OMB under section 3(f)(1) of Executive Order 12866. Notwithstanding this determination, we have assessed the potential costs and benefits, both quantitative and qualitative, of this final regulatory action and have determined that the benefits justify the costs.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these final regulations only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these final regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, or tribal governments in the exercise of their governmental functions.

In this regulatory impact analysis we discuss the need for regulatory action, the potential costs and benefits, net budget impacts, assumptions, limitations, and data sources, as well as regulatory alternatives we considered.

Elsewhere in this section, under *Paperwork Reduction Act of 1995,* we identify and explain burdens specifically associated with information collection requirements.

A detailed analysis, including our Regulatory Flexibility Analysis, is found in Appendix A to this document.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control numbers assigned to the collections of information in these regulations at the end of the affected sections of the regulations.

Sections 668.405, 668.406, 668.410, 668.411, 668.412, 668.413, 668.414, 668.504, 668.509, 668.510, 668.511, and 668.512 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3507(d)), the Department has submitted a copy of these sections, related forms, and Information Collection Requests (ICRs) to the Office of Management and Budget (OMB) for its review.

[185] ''Whether an administrative agency's order or regulation is severable, permitting a court to affirm it in part and reverse it in part, depends on the issuing agency's intent.'' *Davis Cty. Solid Waste Mgmt.* v. *EPA,* 108 F.3d 1454, 1459 (D.C. Cir. 1997) (*quoting North Carolina* v. *FERC,* 730 F.2d 790, 795–96 (D.C. Cir. 1984). ''Severance and affirmance of a portion of an administrative regulation is improper if there is 'substantial doubt' that the agency would have adopted the severed portion on its own.'' Davis, 108 F.3d at 1459. Additionally, a court looks to whether a rule can function as designed if a portion is severed. ''Whether the offending portion of a regulation is severable depends upon the intent of the agency and upon whether the remainder of the regulation could function sensibly without the stricken provision.'' *MD/DC/DE Broadcasters Ass'n.* v. *FCC,* 236 F.3d 13, 22 (D.C. Cir. 2001) (citations omitted).

The OMB Control numbers associated with the regulations and related forms are 1845–0123 (identified as 1845–NEW1 in the NPRM), 1845–0122 (identified as 1845–NEW2 in the NPRM), and 1845–0121 (identified as 1845–NEW3 in the NPRM). Due to the removal of the pCDR measure as an accountability metric, the number of GE programs and enrollments in those programs have been reduced throughout this section.

Section 668.405 Issuing and Challenging D/E Rates

Requirements: Under the regulations, the Secretary will create a list of students who completed a GE program during the applicable cohort period from data reported by the institution. The list will 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 will also indicate which of the students on the list will be excluded from the debt-to-earnings (D/E) rates calculations under § 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 will then have the opportunity, within 45 days of being provided the student list from the Secretary, to propose corrections to the list. After receiving the institution's proposed corrections, the Secretary will notify the institution whether a proposed correction is accepted and will 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 will be at for-profit institutions, 2 percent will be at private non-profit institutions, and 9 percent will 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 will complete their course of study. Therefore, we estimate that there will 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 will 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 § 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 1845–0123.

We estimate that there will 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 will 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 § 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 1845–0123.

We estimate that there will 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 will 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 § 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 1845–0123.

Collectively, the total number of students who complete their programs and who will be included on the lists that will be provided to institutions to review for accuracy is a projected 1,029,889 students, thus increasing burden by 175,081 hours under OMB Control Number 1845–0123.

Requirements: Under § 668.405(d), after finalizing the list of students, the Secretary will 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 will not provide to the Secretary individual data on these students; rather, SSA will 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 will 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 will then be used to calculate the median debt for the program for the listed students. The Secretary will calculate draft D/E rates using the higher of the mean or median annual earnings reported by SSA under § 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 § 668.405(f), the institution will have the opportunity, within 45 days of the Secretary's notice of the draft D/E rates, to challenge the accuracy of the rates, under procedures established by the Secretary. The Secretary will 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 8,895 programs that will be evaluated under the regulations. Our analysis estimates that of those 8,895 programs, with respect to the D/E rates measure, 6,913 programs will be passing, 1,253 programs will be in the zone, and 729 programs will fail.

We estimate that the number of students at for-profit institutions who complete programs that are in the zone will be 77,693 (485,583 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 will be 66,200 (413,747 students enrolled in failing programs times 16 percent, the percentage of students who complete programs), for a total of 143,893 students (77,693 students plus 66,200 students).

We estimate that it will 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 35,973 hours (143,893 students times .25 hours) in OMB Control Number 1845–0123.

We estimate that the number of students at private non-profit institutions who complete programs that are in the zone will be 760 (4,747 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 will be 272 (1,701 students enrolled in failing programs times 16 percent, the percentage of students who complete programs), for a total of 1,032 students (760 students plus 272 students).

We estimate that it will 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 258 hours (1,032 students times .25 hours) in OMB Control Number 1845–0123.

We estimate that the number of students at public institutions who complete programs that are in the zone will be 109 (684 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 will be 84 (523 students enrolled in failing programs times 16 percent, the percentage of students who complete programs), for a total of 193 students (109 students plus 84 students).

We estimate that it will 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 48 hours (193 students times .25 hours) in OMB Control Number 1845–0123.

Collectively, the burden for institutions to examine loan records and to determine whether to make a draft D/E rates challenge will increase burden by 36,279 hours under OMB Control Number 1845–0123.

The total increase in burden for § 668.405 will be 211,360 hours under OMB Control Number 1845–0123.

Section 668.406 D/E Rates Alternate Earnings Appeals

Alternate Earnings Appeals

Requirements: The regulations will allow an institution to submit to the Secretary an alternate earnings appeal if, using data obtained from SSA, the Secretary determined that the program was failing or in the zone under the D/E rates measure. In submitting an alternate earnings appeal, the institution will 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 will base its appeal on alternate earnings evidence from either a survey conducted in accordance with standards included on an Earnings Survey Form developed by NCES or from State-sponsored data systems.

In either instance, the alternate earnings data will be from the same calendar year for which the Secretary obtained earnings data from SSA for use in the D/E rates calculations.

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 14 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 information must include all supporting documentation related to recalculating the D/E rates using alternate earnings data.

Survey: An institution that wishes to submit an appeal by providing survey data must include in its survey all the students who completed the program during the same cohort period that the Secretary used to calculate the final D/E rates under § 668.404 or a comparable cohort period, provided that the institution may elect to exclude from the survey population all or some of the students excluded from the D/E rates calculation under § 668.404(e).

The Secretary will publish in the **Federal Register** an Earnings Survey Form developed by NCES. The Earnings Survey Form will be a pilot-tested universe 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 pilot-tested universe survey will not be required and the Earnings Survey Form will be provided by NCES only as a service to institutions, an institution that chooses not to use the Earnings Survey Form will be required to conduct its survey in accordance with the published NCES standards, including presenting to the survey respondent, in the same order and in the same manner, the same survey items included in the NCES Earnings Survey Form.

Under the regulations, the institution will certify that the survey was conducted in accordance with the standards 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. The attestation will 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 will have 1,225 gainful employment programs in the zone and that 718 programs will be failing for a total of 1,943 programs. We expect that most institutions will determine that SSA data reflect accurately the earnings of students and will therefore not elect to conduct the survey. Accordingly, we estimate that for-profit institutions will submit alternate earnings appeals under the survey appeal option for 10 percent of those programs, which will equal 194 appeals annually. We estimate that conducting the survey, providing the institutional certification, and obtaining the examination-level attestation engagement report will total, on average, 100 hours of increased burden, therefore burden will increase 19,400 hours (194 survey appeals times 100 hours) under OMB Control Number 1845–0122.

We estimate that private-non-profit institutions will have 20 gainful employment programs in the zone and that 8 programs will be failing for a total of 28 programs. We expect that most institutions will determine that SSA data reflect accurately the earnings of students and will therefore not elect to conduct the survey.

Accordingly, we estimate that private non-profit institutions will submit alternate earnings appeals under the survey appeal option for 10 percent of those programs, which will equal 3 appeals annually. We estimate that conducting the survey, providing the institutional certification, and obtaining the examination-level attestation engagement report will total, on average, 100 hours of increased burden, therefore burden will increase 300 hours (3 survey appeals times 100 hours) under OMB Control Number 1845–0122.

We estimate that public institutions will have 8 gainful employment programs in the zone and that 3 programs will be failing for a total of 11 programs. We expect that most

institutions will determine that SSA data reflect accurately the earnings of students and will therefore not elect to conduct the survey. Accordingly, we estimate that public institutions will submit alternate earnings appeals under the survey appeal option for 10 percent of those programs, which will equal 1 appeal annually. We estimate that conducting the survey, providing the institutional certification, and obtaining the examination-level attestation engagement report will total, on average, 100 hours of increased burden, therefore burden will increase 100 hours (1 survey appeals times 100 hours) under OMB Control Number 1845–0122.

Collectively, the projected burden associated with conducting an alternative earnings survey will increase burden by 19,800 hours under OMB Control Number 1845–0122.

State Data Systems

An institution that wishes to submit an appeal by providing State data will include in the list it submits to the State or States all the students who completed the program during the same cohort period that the Secretary used to calculate the final D/E rates under § 668.404 or a comparable cohort period, provided that the institution may elect to exclude from the survey population all or some of the students excluded from the D/E rates calculated under § 668.404(e). The earnings information obtained from the State or States must match 50 percent of the total number of students included on the institution's list, and the number matched must be 30 or more.

Burden Calculation: We estimate that there will be 718 failing GE programs at for-profit institutions and 1,225 programs in the zone, for a total of 1,943 programs. We expect that most institutions will determine that SSA data reflect accurately the earnings of students who completed a program and will therefore not elect to submit earnings data from a State-sponsored system. Accordingly, we estimate that in 10 percent of those cases, institutions will obtain earnings data from a State-sponsored system, resulting in approximately 194 appeals.

We estimate that, on average, each appeal will 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 a State agency (when the State agency is located in a State other than the State in which the institution resides), preparing the list(s), submitting the list(s) to the appropriate State agency, reviewing the results, calculating the revised D/E rates, and submitting those results to the Secretary. Therefore, burden will increase by 3,880 hours (194 State system appeals times 20 hours) under OMB Control Number 1845–0122.

We estimate that there will be 8 failing GE programs at private non-profit institutions and 20 programs in the zone, for a total of 28 programs. We expect that most institutions will determine that SSA data reflect accurately the earnings of students who completed a program and will therefore not elect to submit earnings data from a State-sponsored system. Accordingly, we estimate that in 10 percent of those cases, institutions will obtain earnings data from a State-sponsored system, resulting in 3 appeals.

We estimate that, on average, each appeal will take 20 hours, including execution of an agreement for data sharing and privacy protection under FERPA between the institution and a State agency (when the State agency is located in a State other than the State in which the institution resides), preparing the list(s), submitting the list(s) to the appropriate State agency, reviewing the results, calculating the revised D/E rates, and submitting those results to the Secretary. Therefore burden will increase by 60 hours (3 State system appeals times 20 hours) under OMB Control Number 1845–0122.

We estimate that there will be 3 failing GE programs at public institutions and 8 programs in the zone, for a total of 11 programs. We expect that most institutions will determine that SSA data reflect accurately the earnings of students who completed a program and will therefore not elect to submit earnings data from a State-sponsored system. Accordingly, we estimate that in 10 percent of those cases institutions will obtain earnings data from a State-sponsored system, resulting in approximately 1 appeal. We estimate that, on average, each appeal will take 20 hours, including execution of an agreement for data sharing and privacy protection under FERPA between the institution and a State agency (when the State agency is located in a State other than the State in which the institution resides), preparing the list(s), submitting the list(s) to the appropriate State agency, reviewing the results, calculating the revised D/E rates, and submitting those results to the Secretary. Therefore, burden will increase by 20 hours (1 State system appeal times 20 hours) under OMB Control Number 1845–0122.

Collectively, the projected burden associated with conducting an alternative earnings based on State data systems will increase burden by 3,960 hours under OMB Control Number 1845–0122.

Requirements: Under the regulations, to pursue an alternate earnings appeal, the institution must notify the Secretary of its intent to submit an appeal. This notification must be made no earlier than the date the Secretary provides the institution with draft D/E rates and no later than 14 business days after the Secretary issues the final D/E rates.

Burden Calculation: We estimated above that for-profit institutions will have 194 alternate earnings survey appeals and 194 State-sponsored data system appeals, for a total of 388 appeals per year. We estimate that completing and submitting a notice of intent to submit an appeal will take, on average, 0.25 hours per submission or 97 hours (388 submissions times 0.25 hours) under OMB Control 1845–0122.

We estimated above that private non-profit institutions will have 3 alternate earnings survey appeals and 3 State-sponsored data system appeals, for a total of 6 appeals per year. We estimate that completing and submitting a notice of intent to submit an appeal will take, on average, 0.25 hours per submission or 2 hours (6 submissions times 0.25 hours) under OMB Control 1845–0122.

We estimated above that public institutions will have 1 alternate earnings survey appeal and 1 State-sponsored data system appeal, for a total of 2 appeals per year. We estimate that completing and submitting a notice of intent to submit an appeal will take, on average, 0.25 hours per submission or 1 hour (2 submissions times 0.25 hours) under OMB Control 1845–0122.

Collectively, the projected burden associated with completing and submitting a notice of intent will increase burden by 100 hours under OMB Control Number 1845–0122.

The total increase in burden for § 668.406 will be 23,860 hours under OMB Control Number 1845–0122.

Section 668.410 Consequences of the D/E Rates Measure

Requirements: Under § 668.410(a), we require institutions to provide warnings to students and prospective students in any year for which the Secretary notifies an institution that the program could become ineligible based on its final D/E rates measure for the next award year. Within 30 days after the date of the Secretary's notice of determination under § 668.409, the institution must provide a written warning directly to each student enrolled in the program. To the extent practicable, an institution must provide this warning in other

languages for enrolled students for whom English is not their first language.

In the warning, an institution must 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 will inform the student of academic and financial options available to continue his or her education at the institution; 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; whether the student's earned credits could be transferred to another institution; or refund the tuition, fees, and other required charges paid by, or on behalf of, the student to enroll in the program.

Under § 668.410(a)(5), an affected institution must provide a written warning by hand-delivering it individually or as part of a group presentation, or via email.

Burden Calculation: We estimate that the written warnings will 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 warnings will have to be provided to 1,171,956 students (327,468 students plus 844,488 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) will receive the warning individually and that it will 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 will increase burden by 19,923 hours (117,196 students times 0.17 hours) under OMB Control Number 1845–0123.

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) will receive the warning at a group presentation and that it will 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 will increase burden by 38,675 hours (117,196 times 0.33 hours) under OMB Control Number 1845–0123.

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) will receive the warning via email and that it will take on average 0.017 hours (1 minute) per warning to send the warning to each affected student. This will increase burden by 15,939 hours (937,565 students times 0.017 hours) under OMB Control Number 1845–0123.

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 will be enrolled in zone programs and 5,423 students will be enrolled in failing programs at private non-profit institutions. Thus, the warnings will 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) will receive the warning individually and that it will 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 will increase burden by 131 hours (773 students times 0.17 hours) under OMB Control Number 1845–0123.

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) will receive the warning at a group presentation and that it will 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 will increase burden by 255 hours (773 times 0.33 hours) under OMB Control Number 1845–0123.

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) will receive the warning via email and that it will take on average 0.017 hours (1 minute) per warning to send the warning to each affected student. This will increase burden by 105 hours (6,185 students times 0.017 hours) under OMB Control Number 1845–0123.

Based upon 2009–2010 reported data, 276,234 students were enrolled at public institutions. Of that number of students, we estimate that 628 students will be enrolled in zone programs and 13,178 students will be enrolled in failing programs at public institutions. Thus, the warnings will 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) will receive the warning individually and that it will 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 will increase burden by 235 hours (1,381 students times 0.17 hours) under OMB Control Number 1845–0123.

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) will receive the warning at a group presentation and that it will 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 will increase burden by 456 hours (1,381 times 0.33 hours) under OMB Control Number 1845–0123.

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) will receive the warning via email and that it will take on average 0.017 hours (1 minute) per warning to send the warning to each affected student. This will increase burden by 188 hours (11,044 students times 0.017 hours) under OMB Control Number 1845–0123.

Collectively, providing the warnings will increase burden by 75,907 hours under OMB Control Number 1845–0123.

Students will also be affected by the warnings. On average, given the alternatives available to institutions, we estimate that it will take each student 0.17 hours (10 minutes) to read the warning and ask any questions.

Burden will increase by 199,233 hours (1,171,956 students times 0.17 hours) for the students who will receive warnings from for-profit institutions under one of the three delivery options, under OMB Control Number 1845–0123.

Burden will increase by 1,314 hours (7,731 students times 0.17 hours) for the students who will receive warnings from private non-profit institutions

under one of the three delivery options, under OMB Control Number 1845–0123.

Burden will increase by 2,347 hours (13,806 students times 0.17 hours) for the students who will receive warnings from public institutions under one of the three delivery options, under OMB Control Number 1845–0123.

Collectively, students reading the warning will increase burden by 202,894 hours under OMB Control Number 1845–0123.

Requirements: Under § 668.410(a)(6)(ii), institutions must provide a 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. The warning may be hand-delivered as a separate warning, or as part of a group presentation, or sent via email to the primary email address used by the institution for communicating with prospective students. To the extent practicable, an institution will have to provide this warning in other languages for those students and prospective students for whom English is not their first language.

Burden Calculation: Most institutions will have to contact, or be contacted by, a larger number of prospective students to yield institutions' desired net enrollments. The magnitude of this activity will 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 will 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) will be enrolled in programs at for-profit institutions that require a warning to students and prospective students. Therefore, for-profit institutions will 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 1845–0123.

We estimate that the number of prospective students that must contact or be contacted by private non-profit institutions will 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) will be enrolled in programs at private non-profit institutions that require a warning to students and prospective students. Therefore, private non-profit institutions will 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 1845–0123.

We estimate that the number of prospective students that must contact or be contacted by public institutions will 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) will be enrolled in programs at public institutions that require a warning to students and prospective students. Therefore, public institutions will 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 1845–0123.

Collectively, burden will increase by 706,637 hours under OMB Control Number 1845–0123.

The prospective students will also be affected by the warnings. On average, given the alternatives available to institutions, we estimate that it will take each student 0.08 hours (5 minutes) to read the warning and ask any questions.

Burden will increase by 562,539 hours (7,031,736 times 0.08 hours) for the prospective students who will receive warnings from for-profit institutions, under OMB Control Number 1845–0123.

Burden will increase by 1,113 hours (13,916 times 0.08 hours) for the prospective students who will receive warnings from private non-profit institutions, under OMB Control Number 1845–0123.

Burden will increase by 1,657 hours (20,709 times 0.08 hours) for the prospective students who will receive warnings from public institutions, under OMB Control Number 1845–0123.

Collectively, prospective students reading the warning will increase burden by 565,309 hours under OMB Control Number 1845–0123.

Requirements: Under § 668.410(a)(6)(ii)(B)(*2*), if more than 30 days have passed from the date the initial warning is provided, the prospective student must be provided an additional written warning and may not enroll until three business days later.

Burden Calculation: We estimate that 50 percent of students enrolling in a failing program will do so more than 30 days after receiving the initial prospective student warning. Burden for institutions will increase by 281,269 hours for the 3,515,868 students (7,031,736 prospective students times 50 percent times .08 hours) for whom for-profit institutions must provide subsequent warnings.

Burden will increase by 557 hours for the 6,958 students (13,916 prospective students times 50 percent times .08 hours) for whom private non-profit institutions will provide subsequent warnings.

Burden will increase by 828 hours for the 10,355 students (20,709 prospective students times 50 percent times .08 hours) for whom public institutions will provide subsequent warnings.

Collectively, subsequent warning notices will increase burden by 282,654 hours under OMB Control Number 1845–0123.

Similarly, it will take the recipients of subsequent warnings time to read the second warning. Burden for students will increase by 281,269 hours for the 3,515,868 students (7,031,736 prospective students times 50 percent times .08 hours) to read the subsequent warnings from for-profit institutions, OMB Control Number 1845–0123.

Burden will increase by 557 hours for the 6,958 students (13,916 prospective students times 50 percent times .08 hours) to read the subsequent warnings from private non-profit institutions.

Burden will increase by 828 hours for the 10,355 students (20,709 prospective students times 50 percent times .08 hours) to read the subsequent warnings from public institutions.

Collectively, burden to students to read the subsequent warnings will increase by 282,654 hours under OMB Control Number 1845–0123.

The total increase in burden for § 668.410 will be 2,116,055 hours under OMB Control Number 1845–0123.

Section 668.411 Reporting Requirements for GE Programs

Requirements: Under § 668.411, institutions will 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 initially enrolled 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 will report: (1) The date the student completed or withdrew; (2) the total amount the student received from private education loans for enrollment 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; (4) the total amount for tuition and fees assessed the student for the student's entire enrollment in the program; and (5) the total amount of allowances for books, supplies, and equipment included in the student's title IV, Cost of Attendance for each award year in which the student was enrolled in the program, or a higher amount if assessed by the institution to the student.

By July 31 of the year the regulations take effect, institutions will 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 will need to include the eighth award year no later than July 31. For all subsequent award years, institutions will report not later than October 1, following the end of the award year, unless the Secretary establishes a different date in a notice published in the **Federal Register**. The regulations give the Secretary the flexibility to identify additional reporting items, or to specify a reporting deadline different than October 1, in a notice published in the **Federal Register**.

Finally, the regulations will 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 will take 6 hours for each of those institutions to modify or develop manual or automated systems for reporting under § 668.411. Therefore burden will 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 will take 6 hours for each of those institutions to modify or develop manual or automated systems for reporting under § 668.411. Therefore burden will 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 will take 6 hours for each of those institutions to modify or develop manual or automated systems for reporting under § 668.411. Therefore burden will increase for these institutions by 6,702 hours (1,117 institutions times 6 hours).

Collectively, burden to develop systems for reporting will increase by 23,766 hours (under OMB Control Number 1845–0123.

Requirements: Under § 668.411(a)(3), if an institution is required by its accrediting agency or State to calculate a placement rate for either the institution or the program, or both, the institution is required to report to the Department the required placement rate, using the required methodology, and to report the name of the accrediting agency or State.

Burden Calculation: The Department will be developing a database to collect this data. Therefore, under the Paperwork Reduction Act, the Department will construct an information collection (IC) closer to the time of system development which the public will have an opportunity to provide comment prior to the IC's submission to OMB for approval.

Requirements: Section 668.411(b) requires that, by no later than July 31 of the year the regulations take effect, institutions report the information required by § 668.411(a) for the second through seventh award years prior to that date. For medical and dental programs that require an internship or residency, institutions will need to include the eighth completed 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 will be 2,227,230. This results in a total of 15,196,848 enrollments.

We estimate that, on average, the reporting of GE program information by for-profit institutions will take 0.03 hours (2 minutes) per student as we anticipate that, for most for-profit institutions, reporting will be an automated process. Therefore, GE reporting by for-profit institutions will increase burden by 455,905 hours (15,196,848 students times .03 hours) in OMB Control Number 1845–0123.

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 enrollment was 73,585, for 2012–2013 enrollment was 70,641, and for 2013–2014 enrollment will be 65,697. This results in a total of 384,448 enrollments.

We estimate that, on average, the reporting of GE program information by private non-profit institutions will take 0.03 hours (2 minutes) per student as we anticipate that, for most private non-profit institutions, reporting will be an automated process. Therefore, GE reporting by private non-profit institutions will increase burden by 11,533 hours (384,448 students times .03 hours) in OMB Control Number 1845–0123.

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 enrollment was 352,281, for 2012–2013 enrollment was 338,190, and for 2013–2014 enrollment will be 314,517. This results in a total of 1,840,513 enrollments.

We estimate that, on average, the reporting of GE program information by public institutions will take 0.03 hours (2 minutes) per student as we anticipate that, for most public institutions, reporting will be an automated process. Therefore, GE reporting by public institutions will increase burden by 55,215 hours (1,840,513 students times .03 hours) in OMB Control Number 1845–0123.

Collectively, we estimate that burden upon institutions to meet the initial reporting requirements under § 668.411 will increase burden by 522,653 hours in OMB Control Number 1845–0123.

The total increase in burden for § 668.411 will be 546,419 hours under OMB Control Number 1845–0123.

Section 668.412 Disclosure Requirements for GE Programs

Requirements: Section 668.412 requires institutions to disclose items, using the disclosure template provided by the Secretary. Under § 668.412, the Department has flexibility to tailor the disclosure in a way that will be most useful to students and minimize burden to institutions.

These disclosure items could include items described in § 668.412(a)(1) through (16).

The Secretary will 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 will 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 prominently available in their promotional materials and make it prominent, readily accessible, clear, conspicuous, and directly available on any Web page containing academic, cost, financial aid, or admissions information about a GE program.

An institution that offers a GE program in more than one program length must publish a separate disclosure template for each length of the program.

Burden Calculation: We estimate that of the 37,589 GE programs that reported enrollments in the past, 12,250 programs will be offered by for-profit institutions. We estimate that, annually, the amount of time it will 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 will take to ensure that promotional materials either include the disclosure information or provide a Web address or direct link to the information will 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 will, on average, increase burden by an additional 1 hour per program. Therefore, burden will increase by 5 hours per program for a total of 61,250 hours of increased burden (12,250 programs times 5 hours per program) under OMB Control Number 1845–0123.

We estimate that of the 37,589 GE programs that reported enrollments in the past, 2,343 programs will be offered by private non-profit institutions. We estimate that, annually, the amount of time it will 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 will take to ensure that promotional materials either include the disclosure information or provide a Web address or direct link to the information will 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 will, on average, increase burden by an additional 1 hour per program. Therefore, burden will increase by 5 hours per program for a total of 11,715 hours of increased burden (2,343 programs times 5 hours per program) under OMB Control Number 1845–0123.

We estimate that of the 37,589 GE programs that reported enrollments in the past, 22,996 programs will be offered by public institutions. We estimate that the amount of time it will 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 will take to ensure that promotional materials either include the disclosure information or provide a Web address or direct link to the information will be, on average, 4 hours per program. Additionally, we estimate that revising the institution's Web pages used to disseminate academic, cost, financial aid, and admissions information about the program to also contain the disclosure information will, on average, increase burden by an additional 1 hour per program. Therefore, on average, burden will increase by 5 hours per program for a total of 114,980 hours of increased burden (22,996 programs times 5 hours per program) under OMB Control Number 1845–0123.

Collectively, we estimate that burden will increase by 187,945 hours in OMB Control Number 1845–0123.

Under § 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 acknowledgement 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 included 2,227,230 prospective students. As noted earlier, most institutions will 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 will 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 will be enrolled in GE programs at for-profit institutions. Therefore, for-profit institutions will be required to provide 13,363,380 disclosures to prospective students. On average, we estimate that it will take institutional staff 0.03 hours (2 minutes) per prospective student to provide a copy of the disclosure information which can be hand-delivered, delivered as part of a group presentation, or by sending the disclosure template via the institution's primary email address (used to communicate with students and prospective students). We also estimate that, on average, it will take institutional staff 0.10 hours (6 minutes) to obtain written acknowledgement and answer any questions from each prospective student. Therefore, we estimate that the total burden associated with providing the disclosure information and obtaining written acknowledgement by for-profit institutions will be 0.13 hours (8 minutes) per prospective student. Burden will increase by 1,737,239 hours for for-profit institutions (13,363,380 prospective students times 0.13 hours) under OMB Control Number 1845–0123.

We estimate that the burden on each prospective student will be 0.08 hours (5 minutes) to read the disclosure information and provide written acknowledgement of receipt. Burden will 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 1845–0123.

We estimate that the enrollment in the 2,343 GE programs offered by private non-profit institutions for 2013–2014 included 65,697 prospective students. As noted earlier, most institutions will

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 will be 1.8 times the number of expected enrollment. As noted above we estimate that 65,697 students will be enrolled in GE programs at private non-profit institutions. Therefore, private non-profit institutions will be required to provide 118,255 disclosures (65,697 times 1.8) to prospective students. On average, we estimate that it will take institutional staff 0.03 hours (2 minutes) per prospective student to provide a copy of the disclosure information which can be hand-delivered, delivered as a part of a group presentation, or by sending the disclosure template via the institution's primary email address (used to communicate with students and prospective students). We also estimate that, on average, it will take institutional staff 0.10 hours (6 minutes) to obtain written acknowledgement and answer any questions from each prospective student. Therefore, we estimate that the total burden associated with providing the disclosure information and obtaining written acknowledgement by private-non-profit institutions will be 0.13 hours (8 minutes) per prospective student. Burden will increase by 15,373 hours for private non-profit institutions (118,255 prospective students times 0.13 hours) under OMB Control Number 1845–0123.

We estimate that the burden on each prospective student will be 0.08 hours (5 minutes) to read the disclosure information and provide written acknowledgement of receipt. Burden will 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 1845–0123.

We estimate that the enrollment in the 22,996 GE programs offered by public institutions for 2013–2014 included 314,517 prospective students. As noted earlier, most institutions will 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 will be 1.5 times the number of expected enrollment. As noted above, we estimate that 314,517 students will be enrolled in GE programs at public institutions. Therefore, public institutions will be required to provide 471,776 disclosures (314,517 times 1.5) to prospective students. On average, we estimate that it will take institutional staff 0.03 hours (2 minutes) per prospective student to provide a copy of the disclosure information which can be hand-delivered, delivered as part of a group presentation, or by sending the disclosure template via the institution's primary email address (used to communicate to students and prospective students). We also estimate that, on average, it will take institutional staff 0.10 hours (6 minutes) to obtain written acknowledgement and answer any questions from each prospective student. Therefore, we estimate that the total burden associated with providing the disclosure information and obtaining written acknowledgement by public institutions will be 0.13 hours (8 minutes) per prospective student. Burden will increase by 61,331 hours for public institutions (471,776 prospective students times 0.13 hours) under OMB Control Number 1845–0123.

We estimate that the burden on each prospective student will be 0.08 hours (5 minutes) to read the disclosure information and provide written acknowledgement of receipt. Burden will increase by 37,742 hours for prospective students at public institutions (471,776 prospective students times 0.08 hours) under OMB Control Number 1845–0123.

Collectively, burden will increase by 2,930,215 hours under OMB Control Number 1845–0123.

The total increase in burden for § 668.412 will be 3,118,160 hours under OMB Control Number 1845–0123.

Section 668.413 Calculating, Issuing, and Challenging Completion Rates, Withdrawal Rates, Repayment Rates, Median Loan Debt, Median Earnings, and Program Cohort Default Rate

Requirements: As discussed in connection with § 668.412, an institution will 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 in § 668.413 and based partially on the information that an institution will report under § 668.411, the Secretary will 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 will have an opportunity to correct the list of students who withdrew from a GE program and the list of students who completed or withdrew from a GE program prior to the Secretary sending the lists to SSA for earnings information.

For the median earnings calculation under §§ 668.413(b)(9) and (b)(10), after the Secretary provides a list of the relevant students 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 § 668.413(b)(11). The institution may also correct or update a student's identity information or attendance information on the list.

Burden Calculation: For the 12,250 GE programs at for-profit institutions, we estimate, on average, that it will take institutional staff 2 hours to review each of the two lists to determine whether a student should be included or excluded under § 668.413(b)(11) 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 will increase by 49,000 hours (12,250 programs times 2 lists times 2 hours) under OMB Control Number 1845–0123.

For the 2,343 GE programs at private non-profit institutions, we estimate, on average, that it will take institutional staff 2 hours to review each of the two lists to determine whether a student should be included or excluded 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 will increase by 9,372 hours (2,343 programs times 2 lists times 2 hours) under OMB Control Number 1845–0123.

For the 22,996 GE programs at public institutions, we estimate, on average, that it will take institutional staff 2 hours to review each of the two lists to determine whether a student should be included or excluded 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 will increase by 91,984 hours (22,996 programs times 2 lists times 2 hours) under OMB Control Number 1845–0123.

Collectively, burden will increase by 150,356 hours under OMB Control Number 1845–0123.

Under § 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 will develop the completion rates, withdrawal rates, repayment rates, and median loan debt calculations 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 will take institutional staff 20 hours per program to review the calculations, compare the data to institutional records, and determine whether challenges need to be made to the calculations. Therefore, burden will increase by 245,000 hours (12,250 programs times 20 hours) under OMB Control Number 1845–0123.

The Secretary will develop the completion rates, withdrawal rates, repayment rates, and median loan debt calculations 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 will take institutional staff 20 hours per program to review the calculations, compare the data to institutional records, and determine whether challenges need to be made to the calculations. Therefore, burden will increase by 46,860 hours (2,343 programs times 20 hours) under OMB Control Number 1845–0123.

The Secretary will develop the completion rates, withdrawal rates, repayment rates, and median loan debt calculations 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 will take institutional staff 20 hours per program to review the calculations, compare the data to institutional records, and determine whether challenges need to be made to the calculations. Therefore, burden will increase by 459,920 hours (22,996 times 20 hours) under OMB Control Number 1845–0123.

Collectively, burden will increase by 751,780 under OMB Control Number 1845–0123.

The total increase in burden for § 668.413 will be 902,136 under OMB Control Number 1845–0123.

Section 668.414 Certification Requirements for GE Programs

Requirements: Under § 668.414(a) each institution participating in the title IV, HEA programs will be required to provide a ''transitional certification'' to supplement its current program participation agreement (PPA). The transitional certification will be submitted no later than December 31 of the year in which the regulations take effect. The transitional certification will be signed by the institution's most senior executive officer that each of its currently eligible GE programs included on its Eligibility and Certification Approval Report meets the GE program eligibility certification requirements of this section and will update within 10 days if there are any changes in the approvals for a program, or other changes that make an existing certification inaccurate. Under § 668.414(d), the certification will provide that each GE program meets certain requirements (PPA certification requirements), specifically that each GE program is:

1. 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;

2. Programmatically accredited, if required by a Federal governmental entity or required by a governmental entity in the State in which the institution is located or in which the institution is otherwise required to obtain State approval under 34 CFR 600.9; and

3. Satisfies licensure or certification requirements in the State where the institution is located or in which the institution is otherwise required to obtain State approval, each eligible program it offers satisfies the applicable educational prerequisites for professional licensure or certification requirements in that State so that the student who completes the program and seeks employment in that State 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.

A program is substantially similar to another program if the two programs share the same four-digit CIP code. The Secretary presumes a program is not substantially similar to another program if the two programs have different four-digit CIP codes, but the institution must provide an explanation of how the new program is not substantially similar to an ineligible or voluntarily discontinued program with its certification under § 668.414.

Burden Calculation: We estimate that it will 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 and, when applicable, provide an explanation of how a new program is not substantially similar to an ineligible or voluntarily discontinued program. This will increase burden by 1,263 hours (2,526 institutions times 0.5 hours) under OMB Control Number 1845–0123.

We estimate that it will 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 and, when applicable, provide an explanation of how a new program is not substantially similar to an ineligible or voluntarily discontinued program. This will increase burden by 159 hours (318 institutions times 0.5 hours) under OMB Control Number 1845–0123.

We estimate that it will 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 and, when applicable, provide an explanation of how a new program is not substantially similar to an ineligible or voluntarily discontinued program. This will increase burden by 559 hours (1,117 institutions times 0.5 hours) under OMB Control Number 1845–0123.

The total increase in burden for § 668.414 will be 1,981 hours under OMB Control Number 1845–0123.

Subpart R—Program Cohort Default Rates

Requirements: Under subpart R, the Secretary will calculate a GE program's cohort default rate using a structure that will generally mirror the structure of the iCDR regulations in subpart N of part 668 of the regulations. Thus, depending on the pCDR of a program, an institution will 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. For all requests for challenges, adjustments, or appeals, institutions will receive a loan record detail report (LRDR) provided by the Department.

Burden Calculation: The pCDR regulations in subpart R, although specific to programs, generally mirror the structure of the institutional cohort default rate (iCDR) regulations in subpart N of part 668 of the regulations. However, because pCDR is used as a potential disclosure, and not as a standard for assessing eligibility (as with iCDR), the available appeals are

limited to factual corrections and challenges and the burden assessments that follow recognize that, although 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, institutions will in all likelihood exercise those rights only in those instances in which we calculate a pCDR rate of 20 percent or higher.

Of the 6,815 GE programs that we estimate will be evaluated for pCDR, we estimate that 943 programs will have rates of 30 percent or more and therefore have the highest likelihood of having pCDR challenges, adjustments, or appeals. In addition, we estimate that half of the 1,840 GE programs with a pCDR rate of 20 percent to 29.9 percent will also make challenges, request adjustments, or submit appeals, adding another 920 programs to the 943 that had rates of 30 percent or more for a total of 1,863 programs. We estimate that 92 percent of the 1,863 will be GE programs at for-profit institutions, 3 percent will be GE programs at private non-profit institutions, and 5 percent will be GE programs at public institutions.

We used an analysis of the FY 2011 iCDR 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 § 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 will 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 iCDR 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.

We estimate that out of the likely 1,285 submissions, 1,182 (92 percent) will 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 will be 4 hours (1.5 hours for list review and 2.5 hours for documentation submission). This will increase burden by 4,728 hours (1,182 programs times 4 hours) under OMB Control Number 1845–0121.

We estimate that out of the likely 1,285 submissions, 39 (3 percent) will 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 will be 4 hours (1.5 hours for list review and 2.5 hours for documentation submission). This will increase burden by 156 hours (39 programs times 4 hours) under OMB Control Number 1845–0121.

We estimate that, out of the likely 1,285 submissions, 64 (5 percent) will 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 will be 4 hours (1.5 hours for list review and 2.5 hours for documentation submission). This will increase burden by 256 hours (64 programs times 4 hours) under OMB Control Number 1845–0121.

The total increase in burden for § 668.504 will be 5,140 hours under OMB Control Number 1845–0121.

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 correctly 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 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 will increase at for-profit institutions by 300 hours (200 adjustments times 1.5 hours) under OMB Control Number 1845–0121.

We estimate that 6 (3 percent) of the 217 projected uncorrected data adjustments will be from private non-profit institutions. Therefore, burden will increase at private non-profit institutions by 9 hours (6 adjustments times 1.5 hours) under OMB Control Number 1845–0121.

We estimate that 11 (5 percent) of the 217 projected uncorrected data adjustments will be from public institutions. Therefore, burden will increase at public institutions by 17 hours (11 adjustments times 1.5 hours) under OMB Control Number 1845–0121.

The total increase in burden for § 668.509 will be 326 hours under OMB Control Number 1845–0121.

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 shows 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 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 will be from for-profit institutions. Therefore, burden will increase at for-profit institutions by 68 hours (17 adjustments times 4 hours) under OMB Control Number 1845–0121.

We estimate that 1 (3 percent) of the 19 projected new data adjustments will be from private non-profit institutions. Therefore, burden will increase at private non-profit institutions by 4 hours (1 adjustment times 4 hours) under OMB Control Number 1845–0121.

We estimate that 1 (5 percent) of the 19 projected new data adjustments will be from public institutions. Therefore,

burden will increase at public institutions by 4 hours (1 adjustment times 4 hours) under OMB Control Number 1845–0121.

The total increase in burden for § 668.510 will be 76 hours under OMB Control Number 1845–0121.

Section 668.511 Erroneous Data Appeals

Requirements: An institution could appeal the calculation of a pCDR if it disputes the accuracy of data that was previously challenged under § 668.504(b) (challenge for incorrect data) or 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, and the accuracy of the data has been disputed. 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 the official pCDR, and it must include a description of the incorrect information and all supporting documentation to demonstrate the error.

Burden Calculation: Based upon the fact that in FY 2011 there were no iCDR 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.

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 will take 3 hours.

We estimate that 35 (92 percent) of the 38 projected loan servicing appeals will be from for-profit institutions. Therefore, burden will increase at for-profit institutions by 105 hours (35 servicing appeals times 3 hours) under OMB Control Number 1845–0121.

We estimate that 1 (3 percent) of the 38 projected loan servicing appeals will be from private non-profit institutions. Therefore, burden will increase at private non-profit institutions by 3 hours (1 servicing appeal times 3 hours) under OMB Control Number 1845–0121.

We estimate that 2 (5 percent) of the 38 projected loan servicing appeals will be from public institutions. Therefore, burden will increase at public institutions by 6 hours (2 servicing appeals times 3 hours) under OMB Control Number 1845–0121.

The total increase in burden for § 668.512 will be 114 hours under OMB Control Number 1845–0121.

Consistent with the discussion above, the following chart describes the sections of the regulations involving information collections, the information being collected, 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 $209,247,305, 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	Estimated costs
668.405—Issuing and challenging D/E rates.	The regulations 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 1845–0123 This will be a new collection. We estimate that the burden will increase by 211,360 hours.	$7,725,208
668.406—D/E rates alternate earnings appeals.	The regulations will allow institutions to make an alternate earnings appeal to the D/E rates, when the final D/E rates are failing or in the zone under the D/E rates measure.	OMB 184–0122 This will be a new collection. We estimate that the burden will increase by 23,860 hours.	872,083
668.410—Consequences of the D/E rates measure.	The regulations provide that for any year the Secretary notifies the institution that a GE program could become ineligible based on its D/E rates for the next award year the institution must provide student warnings.	OMB 1845–0123 This will be a new collection. We estimate that the burden for institutions will increase by 1,065,198 hours. We estimate that burden will increase for individuals by 1,050,857 hours.	56,061,956
668.411—Reporting requirements for GE programs.	The regulations will require institutions to report to the Department information about students in GE programs.	OMB 1845–0123 This will be a new collection. We estimate that the burden will increase by 546,419 hours.	19,971,614
668.412—Disclosure requirements for GE programs.	The regulations will require certain information about GE programs to be disclosed by institutions to enrolled and prospective students.	OMB 1845–0123 This will be a new collection. We estimate that the burden for institutions will increase by 2,001,888 hours. We estimate that the burden for individuals will 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, and program cohort default rates.	The regulations allow institutions to challenge the rates and median earnings calculated by the Department.	OMB 1845–0123 This will be a new collection. We estimate that the burden will increase by 902,136 hours.	32,973,071

COLLECTION OF INFORMATION—Continued

Regulatory section	Information collection	OMB Control No. and estimated burden	Estimated costs
668.414—Certification requirements for GE programs.	The regulations will add a requirement that an institution certify that GE programs it offers are approved or accredited by an accrediting agency or the State. The regulations also add a requirement that the institution must provide an explanation of how a new GE program is not substantially similar to an ineligible or voluntarily discontinued program.	OMB 1845–0123 This will be a new collection. We estimate that the burden will increase by 1,981 hours.	72,406
668.504—Draft program cohort default rates and challenges.	The regulations will allow an institution to challenge the draft program cohort default rates.	OMB 1845–0121 This will be a new collection. We estimate that the burden will increase by 5,140 hours.	187,867
668.509—Uncorrected data adjustments	The regulations will allow institutions to request a data adjustment when agreed-upon data changes were not reflected in the official program cohort default rate.	OMB 1845–0121 This will be a new collection. We estimate that the burden will increase by 326 hours.	11,915
668.510—New data adjustments	The regulations will allow institutions 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 1845–0121 This will be a new collection. We estimate that the burden will increase by 76 hours.	2,778
668.511—Erroneous data appeals	The regulations will allow an institution to appeal the program cohort default rate calculation when the accuracy was previously challenged on the basis of incorrect data.	OMB 1845–0121 This will be a new collection. We estimate that the burden will increase by 0 hours.	0
668.512—Loan Servicing Appeal	The regulations will 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 1845–0121 This will be a new collection. We estimate that the burden will increase by 114 hours.	4,167

The total burden hours and change in burden hours associated with each OMB Control number affected by the regulations follows:

Control No.	Total current burden hours	Change in burden hours
1845–0123	0	+6,896,111
1845–0122	0	23,860
1845–0121	0	5,656
Total	0	6,925,627

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Based on the response to the NPRM and on our review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

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You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

(Catalog of Federal Domestic Assistance Numbers: 84.007 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, 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: October 23, 2014.

Arne Duncan,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary of Education amends 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 comply with the requirements 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 addition and revision read as follows:

§ 600.21 Updating application information.

(a) * * *

(11) For any gainful employment program under 34 CFR part 668, subpart Q—

(i) Establishing the eligibility or reestablishing the eligibility of the program;

(ii) Discontinuing the program's eligibility under 34 CFR 668.410;

(iii) Ceasing to provide the program for at least 12 consecutive months;

(iv) Losing program eligibility under § 600.40;

(v) Changing the program's name, CIP code, as defined in 34 CFR 668.402, or credential level; or

(vi) Updating the certification pursuant to § 668.414(b).

* * * * *

(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.

■ 7. Section 668.6 is amended by:

■ A. Removing and reserving paragraph (a).

■ B. Adding a new paragraph (d).

■ C. Revising the authority citation at the end of the section.

The addition and revision read as follows:

§ 668.6 Reporting and disclosure requirements for programs that prepare students for gainful employment in a recognized occupation.

* * * * *

(d) *Sunset provisions.* Institutions must comply with the requirements of this section through December 31, 2016.

(Authority: 20 U.S.C. 1001, 1002, 1088)

§ 668.7 [Removed and Reserved]

■ 8. Remove and reserve § 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.

* * * * *

Subpart P—[Added and Reserved]

■ 11. Add and reserve subpart P.
■ 12. 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.
668.407 [Reserved].
668.408 [Reserved].
668.409 Final determination of the D/E rates measure.
668.410 Consequences of the D/E rates measure.
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, median earnings, and program cohort default rate.
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.

Cohort period. The two-year cohort period or the four-year cohort period, as applicable, during which those students who complete a program are identified in order to assess their loan debt and earnings. The Secretary uses the two-year cohort period when the number of students completing the program is 30 or more. The Secretary uses the four-year cohort period when the number of students completing the program in the two-year cohort period is less than 30 and when the number of students completing the program in the four-year cohort period is 30 or more.

Credential level. The level of the academic credential awarded by an institution to students who complete the program. For the purposes of this subpart, the undergraduate credential levels are: Undergraduate certificate or diploma, associate degree, bachelor's degree, and post-baccalaureate certificate; and the graduate credential levels are graduate certificate (including a postgraduate 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.

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.

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 by a third party on behalf of the institution about enrolling in a GE program.

Student. An individual who received title IV, HEA program funds for enrolling in the 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 D/E rates measure.

(b) *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.

(c) *Outcomes of the D/E rates measure.* (1) A GE program is ''passing'' the D/E rates measure if—

(i) Its discretionary income rate is less than or equal to 20 percent; or

(ii) Its annual earnings rate is less than or equal to eight percent.

(2) A GE program is ''failing'' the D/E rates measure if—

(i) Its discretionary income rate is greater than 30 percent or the income for the denominator of the rate (discretionary earnings) is negative or zero; and

(ii) Its annual earnings rate is greater than 12 percent or the denominator of the rate (annual earnings) is zero.

(3) 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—

(i) Discretionary income rate is greater than 20 percent but less than or equal to 30 percent; or

(ii) Annual earnings rate is greater than eight percent but less than or equal to 12 percent.

(4) For the purpose of the D/E rates measure, subject to paragraph (c)(5) of this section, a GE program becomes ineligible if the program either—

(i) 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

(ii) Has a combination of zone and failing D/E rates for four consecutive award years for which the program's D/E rates are calculated.

(5) If the Secretary does not calculate or issue D/E rates for a program for an award year, the program receives no result under the D/E rates measure for that award year and remains in the same status under the D/E rates measure as the previous award year; provided that if the Secretary does not calculate D/E rates for the program for four or more consecutive award years, the Secretary disregards the program's D/E rates for any award year prior to the four-year period in determining the program's eligibility.

(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)). For the purposes of this paragraph, the Secretary applies the Poverty Guideline for the calendar year immediately following the calendar year for which annual earnings are obtained under paragraph (c) of this section.

(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)(i) Determining the median loan debt of the students who completed the program during the cohort period, based on the lesser of the loan debt incurred by each student as determined under paragraph (d)(1) of this section and the total amount for tuition and fees and books, equipment, and supplies for each student as determined under paragraph (d)(2) of this section;

(ii) Removing, if applicable, the appropriate number of highest loan debts as described in § 668.405(e)(2); and

(iii) Calculating the median of the remaining amounts.

(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; and

(ii) Using an annual interest rate that is the average of the annual statutory interest rates on Federal Direct Unsubsidized Loans that were in effect during—

(A) The three-year period prior to the end of the cohort period, for undergraduate certificate programs, post-baccalaureate certificate programs, and associate degree programs. For these programs, the Secretary uses the Federal Direct Unsubsidized Loan interest rate applicable to undergraduate students;

(B) The three-year period prior to the end of the cohort period, for graduate

certificate programs and master's degree programs. For these programs, the Secretary uses the Federal Direct Unsubsidized Loan interest rate applicable to graduate students;

(C) The six-year period prior to the end of the cohort period, for bachelor's degree programs. For these programs, the Secretary uses the Federal Direct Unsubsidized Loan interest rate applicable to undergraduate students; and

(D) The six-year period prior to the end of the cohort period, for doctoral programs and first professional degree programs. For these programs, the Secretary uses the Federal Direct Unsubsidized Loan interest rate applicable to graduate students.

Note to paragraph (b)(2)(ii): For example, for an undergraduate certificate program, 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 2009–2010 through 2011–2012.

(c) *Annual earnings.* (1) The Secretary obtains from the Social Security Administration (SSA), under § 668.405, the most currently available mean and median annual earnings of the students who completed the GE program during the 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 and assessed charges.* (1) In determining the loan debt for a student, the Secretary includes—

(i) The amount of title IV loans that the student borrowed (total amount disbursed less any cancellations or adjustments) 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) The amount outstanding, as of the date the student completes the program, on any other credit (including any unpaid charges) extended by or on behalf of the institution for enrollment in any GE program attended at the institution that the student is obligated to repay after completing the GE program, including extensions of credit described in clauses (1) and (2) of the definition of, and excluded from, the term ''private education loan'' in 34 CFR 601.2;

(2) The Secretary attributes all of the loan debt incurred by the student, and attributes the amount reported for the student under § 668.411(a)(2)(iv) and (v), 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; and

(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

(3) The Secretary 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 enrollment 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 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;

(5) For graduate 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 issued.* The Secretary does not issue draft or final D/E rates for a GE program under § 668.405 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) The transition period is determined by the length of the GE program for which the Secretary calculates D/E rates under this subpart. The transition period is—

(i) The first five award years for which the Secretary calculates D/E rates under this subpart if the length of the program is one year or less;

(ii) The first six award years for which the Secretary calculates D/E rates under this subpart if the length of the program is between one and two years; and

(iii) The first seven award years for which the Secretary calculates D/E rates if the length of the program is more than two years.

(2) If a GE program is failing or in the zone based on its draft D/E rates for any award year during the transition period, the Secretary calculates transitional draft D/E rates for that award year by using—

(i) The median loan debt of the students who completed the program during the most recently completed award year; and

(ii) The earnings used to calculate the draft D/E rates under paragraph (c) of this section.

(3) For any award year for which the Secretary calculates transitional draft D/E rates for a program, the Secretary determines the final D/E rates for the program based on the lower of the draft or transitional draft D/E rates.

(4) An institution may challenge or appeal the draft or transitional draft D/E rates, or both, under the procedures in § 668.405 and § 668.406, respectively.

(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 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 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 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 the list.

(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 provides the institution with the final list and indicates the cohort period or cohort periods used to create the final list.

(d) *Obtaining earnings data.* The Secretary submits the final list to SSA. For the 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)(i) If the SSA earnings data includes reports from records of earnings on at least 30 students, 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.

(ii) If the SSA earnings data includes reports from records of earnings on fewer than 30 but at least 10 students, the Secretary uses the earnings provided by SSA only for the purpose of disclosure under § 668.412(a)(13).

(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 satisfactory to the Secretary, 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.

(a) *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. 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.

(b) *Basis for appeals.* (1) The institution may use alternate earnings from an institutional survey conducted under paragraph (c) of this section, or from a State-sponsored data system under paragraph (d) of this section, to recalculate the program's final D/E rates and file an appeal if by using the alternate earnings—

(i) For a program that was failing the D/E rates measure, the program is passing or in the zone with respect to the D/E rates measure; or

(ii) For a program that was in the zone for the purpose of the D/E rates measure, the program is passing the D/E rates measure.

(2) When submitting its appeal of the final D/E rates, the institution must—

(i) Use the annual loan payment used in the calculation of the final D/E rates; and

(ii) Use the higher of the mean or median alternate earnings.

(3) The institution must include in its appeal the alternate earnings of all the students who completed the program during the same cohort period that the Secretary used to calculate the final D/E rates under § 668.404 or a comparable cohort period, provided that the institution may elect—

(i) If conducting an alternate earnings survey, to exclude from the survey, in accordance with the standards established by NCES, all or some of the students excluded from the D/E rates calculation under § 668.404(e); or

(ii) If obtaining annual earnings data from one or more State-sponsored data systems, and in accordance with paragraph (d)(2) of this section, to exclude from the list of students submitted to the administrator of the State-administered data system all or some of the students excluded from the D/E rates calculation under § 668.404(e).

(c) *Survey requirements for appeals.* An institution must—

(1) In accordance with the standards included on an Earnings Survey Form developed by NCES, conduct a survey to obtain annual earnings information of the students described in paragraph (b)(3) of this section. The Secretary will publish in the **Federal Register** the Earnings Survey Form that will include a pilot-tested universe survey as well as the survey standards. An institution is not required to use the Earnings Survey Form but, in conducting a survey under this section, must adhere to the survey standards and present to the survey respondent in the same order and same manner the same survey items, included in the Earnings Survey Form; and

(2) Submit to the Secretary as part of its appeal—

(i) 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;

(ii) 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

(iii) Supporting documentation requested by the Secretary.

(d) *State-sponsored data system requirements for appeals.* An institution must—

(1) Obtain annual earnings data from one or more State-sponsored data systems by submitting a list of the students described in paragraph (b)(3) of this section to the administrator of each State-sponsored data system used for the appeal;

(2) Demonstrate that annual earnings data were obtained for more than 50 percent of the number of students in the cohort period not excluded pursuant to paragraph (b)(3) of this section, and that number of students must be 30 or more; and

(3) Submit as part of its appeal—

(i) 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

(ii) Supporting documentation requested by the Secretary.

(e) *Appeals procedure.* (1) 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—

(i) 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(e)(3), but no later than 14 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

(ii) 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.

(2) 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.

(3) 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.

(f) *Appeals determinations.* (1) *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.

(2) *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.

(g) *Conditions for alternate earnings appeals.* An institution must ensure that any material that it submits to make an appeal 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 [Reserved].

§ 668.408 [Reserved].

§ 668.409 Final determination of the D/E rates measure.

(a) *Notice of determination.* For each award year for which the Secretary calculates a D/E rates measure for a GE program, the Secretary issues a notice of determination informing the institution of the following:

(1) The final D/E rates for the program as determined under § 668.404, § 668.405, and, if applicable, § 668.406;

(2) 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;

(3) 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;

(4) Whether the institution is required to provide the student warning under § 668.410(a); and

(5) If the program's final D/E rates are failing or in the zone, instructions on how it may make an alternate earnings appeal pursuant to § 668.406.

(b) *Effective date of Secretary's final determination.* The Secretary's determination as to the D/E rates 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 under § 668.406, constitutes the final decision of the Secretary with respect to the D/E rates 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 the D/E rates measure.

(a) *Student warning*—(1) *Events requiring a warning to students and prospective students.* The institution must provide a warning with respect to a GE program to students and to prospective students for any year for which the Secretary notifies an institution that the program could become ineligible based on its final D/E rates measure for the next award year.

(2) *Content of warning.* Unless otherwise specified by the Secretary in a notice published in the **Federal Register**, the warning must—

(i) State that: ''This program has not passed standards established by the U.S. Department of Education. The Department based these standards on the amounts students borrow for enrollment in this program and their reported earnings. If in the future the program does not pass the standards, students who are then enrolled may not be able to use federal student grants or loans to pay for the program, and may have to find other ways, such as private loans, to pay for the program.''; and

(ii) Refer students and prospective students to (and include a link for) College Navigator, its successor site, or another similar Federal resource, for information about other similar programs.

(iii) For warnings provided to enrolled students—

(A) Describe the academic and financial options available to students to continue their education in another program at the institution, including whether the students could transfer credits earned in the program to another program at the institution and which course credits would transfer, in the event that the program loses eligibility for title IV, HEA program funds;

(B) Indicate whether or not the institution will—

(*1*) Continue to provide instruction in the program to allow students to complete the program; and

(*2*) Refund the tuition, fees, and other required charges paid to the institution by, or on behalf of, students for enrollment in the program; and

(C) Explain whether the students could transfer credits earned in the program to another institution.

(3) *Consumer testing.* The Secretary will conduct consumer testing to determine how to make the student warning as meaningful as possible.

(4) *Alternative languages.* To the extent practicable, the institution must provide alternatives to the English-language student warning for those students and prospective students for whom English is not their first language.

(5) *Delivery to students.* (i) An institution must provide the warning required under this section in writing 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 by—

(A) Hand-delivering the warning as a separate document to the student individually or as part of a group presentation; or

(B) Sending the warning to the primary email address used by the institution for communicating with the student about the program.

(ii) If the institution sends the warning by email, the institution must—

(A) Ensure that the warning is the only substantive content in the email;

(B) Receive electronic or other written acknowledgement from the student that the student has received the email;

(C) Send the warning using a different address or method of delivery if the institution receives a response that the email could not be delivered; and

(D) Maintain records of its efforts to provide the warnings required by this section.

(6) *Delivery to prospective students* — (i) *General.* An institution must provide any warning required under this section to each prospective student or to each third party acting on behalf of the prospective student at the first contact about the program between the institution and the student or the third party acting on behalf of the student by—

(A) Hand-delivering the warning as a separate document to the prospective student or third party individually, or as part of a group presentation;

(B) Sending the warning to the primary email address used by the institution for communicating with the prospective student or third party about the program;

(C) Providing the prospective student or third party a copy of the disclosure template as required by § 668.412(e) that includes the student warning required by this section; or

(D) Providing the warning orally to the student or third party if the contact is by telephone.

(ii) *Special warning requirements before enrolling a prospective student.* (A) Before an institution enrolls, registers, or enters into a financial commitment with a prospective student with respect to the program, the institution must provide any warning required under this section to the prospective student in the manner prescribed in paragraph (a)(6)(i)(A) through (C) of this section.

(B) An institution may not enroll, register, or enter into a financial commitment with the prospective student with respect to the program earlier than—

(*1*) Three business days after the institution first provides the student warning to the prospective student; or

(*2*) If more than 30 days have passed from the date the institution first provided the student warning to the prospective student, three business days after the institution provides another warning as required by this paragraph.

(iii) *Email delivery and acknowledgement.* If the institution sends the warning to the prospective student or the third party by email, including by providing the prospective student or third party an electronic copy of the disclosure template, the institution must—

(A) Ensure that the warning is the only substantive content in the email;

(B) Receive electronic or other written acknowledgement from the prospective

student or third party that the student or third party has received the email;

(C) Send the warning using a different address or method of delivery if the institution receives a response that the email could not be delivered; and

(D) Maintain records of its efforts to provide the warning required under this section.

(7) *Disclosure template.* Within 30 days of receiving notice from the Secretary that the institution must provide a student warning for the program, the institution must update the disclosure template described in § 668.412 to include the warning in paragraph (a)(2) of this section or such other warning specified by the Secretary in a notice published in the **Federal Register**.

(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.* (i) An institution may not seek to reestablish the eligibility of a failing or zone program that it discontinued voluntarily, reestablish the eligibility of a program that is ineligible under the D/E rates measure, or establish the eligibility of a program that is substantially similar to the discontinued or ineligible program, until three years following the date specified in the notice of determination informing the institution of the program's ineligibility or the date the institution discontinued the failing or zone program.

(ii) An institution may not seek to reestablish the eligibility of a program that it discontinued voluntarily after receiving draft D/E rates that are failing or in the zone, or establish the eligibility of a program that is substantially similar to the discontinued program, until—

(A) Final D/E rates that are passing are issued for the program for that award year; or

(B) If the final D/E rates for the program for that award year are failing or in the zone, three years following the date the institution discontinued the program.

(iii) For the purposes of this section, an institution voluntarily discontinues a program on the date the institution provides written notice to the Secretary that it relinquishes the title IV, HEA program eligibility of that program.

(iv) For the purposes of this subpart, a program is substantially similar to another program if the two programs share the same four-digit CIP code. The Secretary presumes a program is not substantially similar to another program if the two programs have different four-digit CIP codes but the institution must provide an explanation of how the new program is not substantially similar to the ineligible or voluntarily discontinued program with its certification under § 668.414.

(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(c).

(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;

(3) If the institution is required by its accrediting agency or State to calculate a placement rate for either the institution or the program, or both, the placement rate for the program, calculated using the methodology required by that accrediting agency or State, and the name of that accrediting agency or State; and

(4) 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 paragraphs (a)(1) and (2) 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 different dates in a notice published in the **Federal Register**.

(2) An institution must report the information required under paragraph (a)(3) of this section on the date and in the manner prescribed by the Secretary in a notice published in the **Federal Register**.

(3) 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 or equivalent, 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 either for the program or the institution, or both, using the required methodology of that accrediting agency or State.

(9) Of the individuals enrolled in the program during the most recently completed award year, the percentage who received a title IV loan or a private loan for enrollment in the program.

(10) As calculated by the Secretary, the median loan debt as determined under § 668.413 of any one or all of the following groups:

(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 mean or median earnings of any one or all of the following groups of students:

(i) Students who completed the program during the 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 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 § 668.413, the most recent program cohort default rate.

(13) As calculated by the Secretary under § 668.404, the most recent annual earnings rate.

(14)(i) Whether the program does or does not satisfy—

(A) The applicable educational prerequisites for professional licensure or certification in each State within the institution's MSA; and

(B) The applicable educational prerequisites for professional licensure or certification in any other State for which the institution has made a determination regarding such requirements.

(ii) For any States not described in paragraph (a)(14)(i) of this section, a statement that the institution has not made a determination with respect to the licensure or certification requirements of those States.

(15) Whether the program is programmatically accredited and the name of the accrediting agency.

(16) A link to the U.S. Department of Education's College Navigator Web site, or its successor site, or other similar Federal resource.

(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) The institution must update the disclosure template to include any student warning as required under § 668.410(a)(7).

(c) *Program Web pages.* (1) On any Web page containing academic, cost, financial aid, or admissions information about a GE program maintained by or on behalf of an institution, the institution must provide the disclosure template for that program or a prominent, readily accessible, clear, conspicuous, and direct link to the disclosure template for that program.

(2) The Secretary may require the institution to modify a Web page if it provides a link to the disclosure template and the link is not prominent, readily accessible, clear, conspicuous, and direct.

(d) *Promotional materials.* (1) All promotional materials made available by or on behalf of an institution 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 URL or link is prominent, readily accessible, clear, conspicuous, and direct and 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) Before a prospective student signs an enrollment agreement, completes registration, or makes a financial commitment to the institution, the institution must provide the prospective student or a third party acting on behalf of the prospective student, as a separate document, a copy of the disclosure template.

(2) The disclosure template may be provided to the prospective student or third party by—

(i) Hand-delivering the disclosure template to the prospective student or third party individually or as part of a group presentation; or

(ii) Sending the disclosure template to the primary email address used by the institution for communicating with the prospective student or third party about the program.

(3) If the institution hand-delivers the disclosure template to the prospective student or third party, it must obtain written confirmation from the prospective student or third party that the prospective student or third party received a copy of the disclosure template.

(4) If the institution sends the disclosure template to the prospective student or third party by email, the institution must—

(i) Ensure that the disclosure template is the only substantive content in the email;

(ii) Receive electronic or other written acknowledgement from the prospective

student or third party that the prospective student or third party received the email;

(iii) Send the disclosure template using a different address or method of delivery if the institution receives a response that the email could not be delivered; and

(iv) Maintain records of its efforts to provide the disclosure template required under this section.

(f) *Disclosure templates by program length, location, or format.* (1) An institution that offers a GE program in more than one program length must publish a separate disclosure template for each length of the program. The institution must ensure that each disclosure template clearly identifies the applicable length of the program.

(2) An institution that offers a GE program in more than one location or format (e.g., full-time, part-time, accelerated) may publish a separate disclosure template for each location or format if doing so would result in clearer disclosures under paragraph (a) of this section. 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) If an institution publishes a separate disclosure template for each length, or for each location or format, of the program, the institution must disaggregate, by length of the program, location, or format, those disclosures set forth in paragraphs (a)(4) and (5), (a)(7) through (9), and (a)(14) and as otherwise provided by the Secretary in a notice published in the **Federal Register**.

(g) *Privacy considerations.* An institution may not include on the disclosure template any of the disclosures described in paragraphs (a)(2), (a)(5), and (a)(6) or paragraphs (a)(8) through (13) of this section if they are based on fewer than 10 students.

(Authority: 20 U.S.C. 1001, 1002, 1088)

§ 668.413 Calculating, issuing, and challenging completion rates, withdrawal rates, repayment rates, median loan debt, median earnings, and program cohort default rate.

(a)(1) *General.* Under the procedures in this section, the Secretary determines the completion rates, withdrawal rates, repayment rates, median loan debt, median earnings, and program cohort default rate 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.

(2) *Enrollment cohort.* (i) Subject to paragraph (a)(2)(ii) of this section, for the purpose of calculating the completion and withdrawal rates under paragraph (b) of this section, the enrollment cohort is comprised of all the students who began enrollment in a GE program during an award year. For example, the students who began enrollment in a GE program during the 2014–2015 award year constitute the enrollment cohort for that award year.

(ii) A student is excluded from the enrollment cohort for the purpose of calculating the completion and withdrawal rates under paragraph (b) of this section if, while enrolled in the program, the student died or became totally and permanently disabled and was unable to continue enrollment on at least a half-time basis, as determined under the standards in 34 CFR 685.213.

(b) *Calculating completion rates, withdrawal rates, repayment rates, median loan debt, median earnings, and program cohort default rate*— (1) *Completion rates.* For each enrollment cohort, the Secretary calculates the completion rates of a GE program 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.* For each enrollment cohort, the Secretary calculates two withdrawal rates for a GE program 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 GE 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 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 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 cohort period by—

(A) Creating a list of the students who completed the program during the 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 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 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.

(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 the list.

(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 cohort period used to create the list.

(iv) *Obtaining earnings data.* If the final list includes 10 or more students, the Secretary submits the final list to SSA. For the 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 cohort period by—

(A) Creating a list of the students who were enrolled in the program but withdrew from the program during the 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 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 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.

(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 the list.

(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 cohort period used to create the list.

(iv) *Obtaining earnings data.* If the final list includes 10 or more students, the Secretary submits the final list to SSA. For the 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 cohort period and students who withdrew from the program during the cohort period in accordance with paragraphs (b)(8) and (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.

(13) *Program cohort default rate.* The Secretary calculates the program cohort default rate using the methodology and procedures set forth in subpart R of this part.

(c) *Notification to institutions.* The Secretary notifies the institution of the—

(1) Draft completion, withdrawal, and repayment rates calculated under paragraph (b)(1) through (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) of this section, the students who withdrew from the program, as described in paragraph (b)(5) of this section, 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 cohort period.

(3) Median earnings of the students who completed the program, as described in paragraph (b)(8) of this section, the students who withdrew from the program, as described in paragraph (b)(9) of this section, 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 cohort period.

(4) Draft program cohort default rate, as described in paragraph (b)(13) of this section.

(d) *Challenges to completion rates, withdrawal rates, repayment rates, median loan debt, median earnings, and program cohort default rate*—(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.

(3) *Program cohort default rate.* The Secretary considers any challenges to the program cohort default rate under the procedures for challenges set forth in subpart R of this part.

(e) *Final calculations*—(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) Unless paragraph (g) of this section applies, 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.

(3) *Program cohort default rate.* Subject to resolution of any challenge under subpart R of this part, a program's program cohort default rate calculated by the Secretary under subpart R constitutes the official program cohort default rate for that program. After the Secretary provides the notice of determination, the Secretary may publish the official program cohort default rate.

(f) *Conditions for challenges.* An institution must ensure that any material that it submits to make any corrections or challenge under this section is—

(1) Complete, timely, accurate, and in a format acceptable to the Secretary as described in this subpart and, with respect to program cohort default rate, in subpart R of this part; and

(2) Consistent with any instructions provided to the institution with the notice of its draft completion, withdrawal, and repayment rates, median loan debt, or program cohort default rate.

(g) *Privacy considerations.* The Secretary does not publish a determination described in paragraphs (b)(1) through (6), (b)(8) through (b)(10), and(b)(13) of this section, and an institution may not disclose a determination made by the Secretary or make any disclosures under those paragraphs, if the determination is based on fewer than 10 students.

(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 included on its Eligibility and Certification Approval Report meets the requirements of paragraph (d) of this section. The Secretary accepts the certification as an addendum to the institution's program participation agreement with the Secretary under § 668.14.

(2) If an institution makes the certification in its program participation agreement 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) *Program participation agreement certification.* As a condition of its continued participation in the title IV, HEA programs, an institution must certify in its program participation agreement with the Secretary under § 668.14 that each of its currently eligible GE programs included on its Eligibility and Certification Approval Report meets the requirements of paragraph (d) of this section. An institution must update the certification within 10 days if there are any changes in the approvals for a program, or other changes for a program that make an existing certification no longer accurate.

(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 GE program that is substantially similar to a failing or zone program that the institution voluntarily discontinued or became ineligible as described in § 668.410(b)(2), 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 for each eligible program included on its Eligibility and Certification Approval Report, 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 in which the institution is otherwise required to obtain State approval under 34 CFR 600.9;

(3) For the State in which the institution is located or in which the institution is otherwise required to obtain State approval under 34 CFR 600.9, each eligible program it offers satisfies the applicable educational prerequisites for professional licensure or certification requirements in that State so that a student who completes the program and seeks employment in that State 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; and

(4) For a program for which the institution seeks to establish eligibility for title IV, HEA program funds, the program is not substantially similar to a program offered by the institution that, in the prior three years, became ineligible for title IV, HEA program funds under the D/E rates measure or was failing, or in the zone with respect to, the D/E rates measure and was voluntarily discontinued by the institution. The institution must include with its certification an explanation of how the new program is not substantially similar to any such ineligible or discontinued program.

(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)

■ 13. 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 [Reserved]
668.507 Preventing evasion of program cohort default rates.
668.508 General requirements for adjusting and appealing official program cohort default rates.
668.509 Uncorrected data adjustments.
668.510 New data adjustments.
668.511 Erroneous data appeals.
668.512 Loan servicing appeals.
668.513 [Reserved]
668.514 [Reserved]
668.515 [Reserved]
668.516 Fewer-than-ten-borrowers determinations.

Subpart R—Program Cohort Default Rate

§ 668.500 Purpose of this subpart.

General. The program cohort default rate is a measure of a GE program offered by the institution. This subpart describes how program cohort default rates are calculated, and how you may request changes to your program cohort default rates or appeal the rate. 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)

§ 668.501 Definitions of terms used in this subpart.

We use the following definitions in this subpart:

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).

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 Secretary's servicer is the data manager.

Days. In this subpart, ''days'' means calendar days.

Default. A borrower is considered to be in default for program cohort default rate purposes under the rules in § 668.502(c).

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.

Entering repayment. (1) Except as provided in paragraphs (2) and (3) of this definition, 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 (1) or (2) of this definition.

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.

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.

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.

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.

We. We are the Department, the Secretary, or the Secretary's designee.

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)

§ 668.502 Calculating program cohort default rates.

(a) *General.* This section describes the four steps that we follow to calculate 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 10, we also include the borrowers in your cohorts for the two most recent prior fiscal years for which we have data that identifies those borrowers who entered repayment during those 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 attend 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) Ten 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) of this section, by the number of borrowers in the cohort, as determined under paragraph (b) of this section.

(2) Fewer than 10 borrowers in your cohort for a fiscal year, your program cohort default rate is the percentage that is calculated by—

(i) For the first two years we attempt to calculate program cohort default rates under this part for a program, dividing the total number of borrowers in that program's cohort and in the two most recent prior cohorts for which we have data to identify the individuals comprising the cohort who are in default, as determined for each program's cohort under paragraph (c) of this section, by the total number of

borrowers in that program cohort and the two most recent prior cohorts for which we have data to identify the individuals comprising the cohort, as determined for each program cohort under paragraph (b) of this section.

(ii) For other fiscal years, by 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) of this section.

(iii) If we identify a total of fewer than ten borrowers under paragraph (d)(2) of this section, we do not calculate a draft program cohort default rate for that fiscal year.

(Authority: 20 U.S.C. 1001, 1002, 1088)

§ 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) [Reserved]

(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 you 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.

(Authority: 20 U.S.C. 1001, 1002, 1088)

§ 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) Except as provided in § 668.502(d)(2)(i), 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.

(Authority: 20 U.S.C. 1001, 1002, 1088)

§ 668.505 Notice of the official program cohort default rate of a GE program.

(a) We notify you of the official program cohort default rate of a GE program after we calculate it. After we send our notice to you, we publish a list of GE 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, 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), timelines for submitting, 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)

§ 668.506 [Reserved]

§ 668.507 Preventing evasion 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)

§ 668.508 General requirements for adjusting and appealing official program cohort default rates.

(a) [Reserved]

(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.

(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 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)

§ 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) 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)

§ 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) 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)

§ 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 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 official program cohort default rate. 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).

(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) 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)

§ 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 the most recent program cohort default rate for a GE program.

(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 servicer that are used in determining your program cohort default rate.

(f) *Determination.* (1) We determine the number of loans, based on the 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)

§ 668.513 [Reserved]

§ 668.514 [Reserved]

§ 668.515 [Reserved]

§ 668.516 Fewer-than-ten-borrowers determinations.

We calculate an official program cohort default rate regardless of the number of borrowers included in the applicable cohort or cohorts. However, an institution may not disclose an official program cohort default rate under § 668.412(a)(12) or otherwise, if the number of borrowers in the applicable cohorts is fewer than ten.

(Authority: 20 U.S.C. 1001, 1002, 1088)

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix A—Regulatory Impact Analysis

This regulatory impact analysis (RIA) is divided into the following sections:

1. Need for Regulatory Action

In ''Background'' and ''Outcomes and Practices'' we discuss how high debt and relatively poor earnings affect students who enroll in gainful employment programs (''GE programs''). In ''Basis of Regulatory Approach,'' we consider the legislative history of the statutory provisions pursuant to which the Department is promulgating these regulations. ''Regulatory Framework'' provides an overview of the Department's efforts, through these regulations, to establish an institutional accountability system for GE programs and to increase transparency of 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.

2. Analysis of the Regulations

Using data reported by institutions pursuant to the 2011 Prior Rule, we estimate how existing GE programs would have fared under these regulations and how students would have been impacted.

3. Costs, Benefits, and Transfers

The impact estimates provided in ''Analysis of the Regulations'' are used to consider the costs and benefits of the regulations to students, institutions, the Federal Government, and State and local governments. In ''Net Budget Impacts'' we estimate the budget impact of the regulations. We also provide a ''Sensitivity Analysis'' to demonstrate how alternative student and program impact assumptions would change our budget estimates.

4. Regulatory Alternatives Considered

In this section, we describe the other approaches the Department considered for key features of the regulations, including components of the D/E rates measures and possible alternative metrics.

5. Regulatory Flexibility Analysis

The RIA concludes with an analysis of the potential impact of the regulations on small businesses and non-profit institutions.

1. Need for Regulatory Action

Background

These 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 income.

Through this regulatory action, the Department establishes: (1) An accountability framework for GE programs that defines what it means to prepare students for gainful employment in a recognized occupation by establishing measures by which the Department will evaluate whether a GE program remains eligible for title IV, HEA program funds, and (2) a transparency framework that will increase the quality and availability of information about the outcomes of students enrolled in GE programs.

The accountability framework defines what it means to prepare students for gainful employment by establishing measures that will assess whether programs provide quality education and training that allow students to pay back their student loan debt.

The transparency framework establishes reporting and disclosure requirements that will 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 will provide the public, taxpayers, and the Government with relevant information to understand the outcomes of the Federal investment in these programs. Finally, the transparency framework will provide institutions with meaningful information that they can use to improve the outcomes of students that attend their programs.

Outcomes and Practices

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.

For fiscal year (FY) 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.[186] About 61 percent of these programs are at public institutions, 6 percent at private non-profit institutions, and 33 percent at for-profit institutions. 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 1.1 provides, by two-digit Classification of Instructional Program (CIP) code, the number of GE programs for which institutions reported program information to the Department in FY 2010. Table 1.2 provides the enrollment of students receiving title IV, HEA program funds in GE programs, by two-digit CIP code, for which institutions reported program information to the Department.

[186] NSLDS.

Table 1.1: FY 2010 GE Program Count

2-Digit CIP Code	2-Digit CIP Name	Public		Private		Proprietary							Total for All Sectors
		Ugrad cert	Post bacc cert	Ugrad cert	Post bacc cert	Ugrad cert	Associates	Bachelor's	Post bacc cert	Master's	Doctoral	First prof	
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 1.2: 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 for All Sectors
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 1.3 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 1.3: Characteristics of Students Enrolled in GE Programs (FY 2010)[187]

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		70.50%	41.50%	30.10%	66.20%	3.70%	70.10%
	< 2 year	Certificate	67.50%	37.30%	39.30%	72.00%	3.60%	83.70%
	2-3 year	Certificate	71.10%	43.20%	28.90%	65.20%	3.70%	69.60%
	4+ year	Certificate	63.60%	33.20%	30.30%	63.60%	4.30%	67.50%
		Post-Bacc Certificate	n/a	15.40%	47.00%	94.30%	4.00%	65.00%
Private	All		67.80%	40.80%	31.20%	63.60%	3.40%	67.00%
	< 2 year	Certificate	81.40%	52.10%	31.90%	63.30%	3.00%	53.90%
		Post-Bacc Certificate	n/a	33.30%	66.70%	100.00%	0.00%	66.70%
	2-3 year	Certificate	56.80%	38.60%	31.50%	64.20%	3.90%	71.00%
		Post-Bacc Certificate	n/a	26.70%	6.70%	93.30%	0.00%	86.70%
	4+ year	Certificate	69.10%	47.60%	28.60%	53.60%	2.60%	68.40%
		Post-Bacc Certificate	n/a	17.40%	37.30%	89.10%	5.10%	68.30%
For-Profit	All		63.70%	34.10%	36.60%	68.80%	10.50%	64.10%
	< 2 year	Certificate	75.60%	47.00%	27.10%	55.50%	2.90%	74.10%
		Associate's	96.00%	80.60%	34.30%	50.30%	2.30%	57.50%
		1st Professional Degree	n/a	51.30%	31.70%	56.20%	0.00%	94.70%
	2-3 year	Certificate	74.90%	43.40%	27.80%	53.90%	4.70%	65.40%
		Associate's	74.20%	44.40%	24.20%	54.00%	5.00%	62.90%
		Post-Bacc Certificate	n/a	16.80%	44.40%	86.00%	2.80%	79.20%
	4+ year	Certificate	72.10%	45.30%	33.60%	61.30%	4.60%	76.50%
		Associate's	60.00%	35.60%	38.90%	66.70%	11.80%	63.20%
		Bachelor's	55.30%	27.00%	39.40%	75.20%	14.70%	59.50%
		Post-Bacc Certificate	n/a	15.50%	43.70%	97.90%	8.00%	75.50%
		Master's	n/a	19.00%	48.30%	94.50%	14.00%	66.00%
		Doctoral	n/a	16.50%	48.90%	97.90%	14.60%	66.90%
		1st Professional Degree	n/a	27.10%	32.70%	80.90%	10.90%	52.40%
All	**All**		**64.90%**	**34.70%**	**36.10%**	**68.50%**	**10.00%**	**64.50%**

[187] Pell grant recipient percentages are 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 are not included in calculation of Pell recipient percentages. Other percentages are 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 are generated by weighting program results by FY 2010 enrollment.

Research has demonstrated the significant benefits of postsecondary education. Among them are private pecuniary benefits [188] such as higher wages and social benefits such as a better educated and flexible workforce and greater civic participation.[189] [190] [191] [192] Even though the costs of postsecondary education have risen, there is evidence that the average financial returns to graduates have also increased.[193]

Our analysis, provided in more detail in ''Analysis of the 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 that the Department estimates would be assessed under the accountability metrics of the final regulations produced graduates with mean and median annual earnings below those of a full-time worker earning no more than the Federal minimum wage ($15,080).[194] [195] Approximately 22 percent of borrowers who attended programs that the Department estimates would be assessed under the accountability metrics of the final regulations defaulted on their Federal student loans within the first three years of entering repayment.[196]

In light of the low earnings and high rates of default of graduates and borrowers at some GE programs, the Department is concerned that all students at these programs may not be making optimal educational and borrowing decisions. While many students appear to borrow less than might be optimal, either because they are risk averse or lack access to credit,[197] the outcomes previously described 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,[198] State and local postsecondary education funding has flattened,[199] and relatively expensive for-profit institutions have proliferated.[200] Roughly only one-quarter of the increase in student debt in the past twenty-five years can be directly attributed to Americans obtaining more education.[201] Student loan debt now stands at over $1,096.5 billion nationally and rose by 80 percent, or $463.2 billion, between FY2008 and FY2013,[202] a period when other forms of consumer debt were flat or declining.[203] Since 2003, the percentage of 25-year-olds with student debt has nearly doubled, increasing from 25 percent to 43 percent.[204] 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.[205]

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.[206] While State funding for public institutions has stagnated, Federal student aid has increased dramatically. Overall Federal Pell Grant expenditures have grown from $7.96 billion in award year 2000–01 to approximately $32 billion in award year 2012–13, and Stafford Loan volumes have increased from $29.5 billion to $78 billion between award year 2000–01 and 2013–14.[207] Much of the growth in overall Pell Grant expenditure is driven by an increase in recipients from approximately 4 million in award year 2000–01 to 8.8 million in 2013–14 and because the maximum Pell Grant grew by 10 percent after adjusting for inflation between 2003–2004 and 2013–2014.[208]

Other evidence suggests that student borrowing may not be too high for all students and at all institutions but rather, overborrowing results from specific and limited conditions.[209] 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 their job outcomes or the expected value of the investment they make in their education.[210] 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.[211]

Inefficiently high borrowing can cause substantial harm to borrowers. There is some evidence suggesting that high levels of student debt decrease the long-term probability of marriage.[212] For those who do not complete a degree, greater amounts of student debt may raise the probability of bankruptcy.[213] There is also evidence that it increases the probability of being credit constrained, particularly if students underestimate the probability of dropping out.[214] Since the Great Recession, student debt has been found to be associated with reduced home ownership rates.[215] And, 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.[216]

Further, when borrowers default on their loans, everyday activities like signing up for utilities, obtaining insurance, and renting an apartment can become a challenge.[217] Such borrowers become subject to losing Federal payments and tax refunds and wage garnishment.[218] Borrowers who default might also be denied a job due to poor credit, struggle to pay fees necessary to maintain professional licenses, or be unable to open a new checking account.[219]

There is ample evidence that students are having difficulty repaying their loans. The national two-year cohort default rate on

[188] 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.

[189] 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.

[190] Kane, T. J., and Rouse, C. E. (1995). Labor Market Returns to Two- and Four-Year College. *The American Economic Review,* 85 (3), 600–614.

[191] Cellini, S., and Chaudhary, L. (2012). ''The Labor Market Returns to For-Profit College Education.'' Working paper.

[192] Baum, S., Ma, J., and Payea, K. (2013) ''Education Pays 2013: The Benefits of Education to Individuals and Society'' College Board. Available at *http://trends.collegeboard.org/*.

[193] 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.

[194] 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.

[195] 2012 GE informational D/E rates.

[196] 2012 GE informational D/E rates. The percent of borrowers who default is calculated based on pCDR data.

[197] Dunlop, E. ''What Do Student Loans Actually Buy You? The Effect of Stafford Loan Access on Community College Students,'' Working Paper (2013).

[198] Martin, A., and Andrew L., ''A Generation Hobbled by the Soaring Cost of College,'' New York Times, May 12, 2012.

[199] Deming, D., Goldin, C., and Katz, L. (2013). *For Profit Colleges. Future of Children,* 23(1), 137–164.

[200] Id.

[201] Akers, B., and Chingos, M. (2014). Is a Student Loan Crisis on the Horizon. Brookings Institution.

[202] U.S. Department of Education, *Federal Student Aid Portfolio Summary,* National Student Loan Data System available at *https://studentaid.ed.gov/about/data-center/student/portfolio*.

[203] 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*.

[204] 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*.

[205] Id.

[206] Deming, D., Goldin, C., and Katz, L. (2013). *For Profit Colleges. Future of Children,* 23(1), 137–164.

[207] U.S. Department of Education, Federal Student Aid, *Title IV Program Volume Reports,* available at *https://studentaid.ed.gov/about/data-center/student/title-iv*. Stafford Loan comparison based on FFEL and Direct Loan student volume excluding Graduate PLUS loans that did not exist in 2000–01.

[208] Baum, S and Payea, K. (2013). Trends in Student Aid, College Board.

[209] 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.

[210] *Id.* at 165–192.

[211] *Id.*

[212] Gicheva, D. ''Student Loans or Marriage? A Look at the Highly Educated,'' Working paper (2014).

[213] Gicheva, D., and U. N. C. Greensboro. ''The Effects of Student Loans on Long-Term Household Financial Stability.'' Working Paper (2013).

[214] Id.

[215] 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.

[216] Brown, M., and Sydnee, C. (2013). Young Student Loan Borrowers Retreat from Housing and Auto Markets. *Liberty Street Economics,* available at: *http://libertystreeteconomics.newyorkfed.org/2013/04/young-student-loan-borrowers-retreat-from-housing-and-auto-markets.html*.

[217] *https://studentaid.ed.gov/repay-loans/default*.

[218] *https://studentaid.ed.gov/repay-loans/default*.

[219] *www.asa.org/in-default/consequences/*.

Stafford loans has increased from 5.2 percent in 2006 to 10 percent in 2011.[220] As of 2012, approximately 6 million borrowers were in default on Federal loans, owing $76 billion.[221]

The determinants of default, which include both student and institutional characteristics, have been examined by many researchers. A substantial body of research suggests that ''completing a postsecondary program is the strongest single predictor of not defaulting regardless of institution type.'' [222] 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.[223] 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.[224] However, Belfield found substantial differences between students who attended for-profit institutions 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.[225] Two recent studies also found that students who attend for-profit colleges have higher rates of default than comparable students who attend public colleges.[226] [227]

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 such as licensing, work experience, and programmatic accreditation requirements needed for students to obtain higher paying jobs in a field. The outcomes of students who attend GE programs at for-profit educational institutions are of particular concern.

The for-profit sector has experienced tremendous growth in recent years,[228] fueled in large part by Federal student aid funding and the increased demand for postsecondary education during the recent recession.[229] The share of Federal student financial aid going to students at for-profit institutions has grown from approximately 13 percent of all title IV, HEA program funds in award year 2000–2001 to 19 percent in award year 2013–2014.[230]

The for-profit sector plays an important role in serving traditionally underrepresented populations of students. For-profit institutions are typically open-enrollment institutions that are more likely to enroll students who are older, women, Black, or Hispanic, or with low incomes.[231] Single parents, students with a certificate of high school equivalency, and students with lower family incomes are also more commonly found at for-profit institutions than community colleges.[232]

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.[233] 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.'' [234]

At least some research suggests that for-profit institutions respond to demand that public institutions are unable to handle. Recent evidence from California suggests that for-profit institutions absorb students where public institutions are unable to respond to demand due to budget constraints.[235] [236] Additional research has 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.'' [237]

Other evidence, however, suggests that for-profits are facing increasing competition from community colleges and traditional universities, as these institutions have started to expand their programs in online education. According to one annual report recently filed by a large, publically traded for-profit institution, ''a substantial proportion of traditional colleges and universities and community colleges now offer some form of . . . online education programs, including programs geared towards the needs of working learners. As a result, we continue to face increasing competition, including from colleges with well-established brand names. As the online . . . learning segment of the postsecondary education market matures, we believe that the intensity of the competition we face will continue to increase.'' [238]

On balance, we believe, and research confirms, that the for-profit sector has many positive features. There is also, however, growing evidence of troubling outcomes and practices at some for-profit institutions.

For-profit institutions typically charge higher tuitions than public postsecondary institutions. Among first-time full-time degree- or certificate-seeking undergraduates at title IV institutions operating on an academic calendar system and excluding students in graduate programs, average tuition and required fees at less-than-two-year for-profit institutions are more than double the average cost at less-than-two-year public institutions and average tuition and required fees at two-year for-profit institutions are about four times the average cost at two-year public institutions.[239] [240]

While for-profit institutions may need to charge more than public institutions because they do not have the State and local appropriation dollars and must pass the educational cost onto the student, there is some indication that even when controlling for government subsidies, for-profit institutions charge more than their public counterparts. To assess the role of government subsidies in driving this cost differential, Cellini conducted a sensitivity analysis comparing the costs of for-profit and

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[220] 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.*

[221] Martin, A., ''Debt Collectors Cashing In on Student Loans,'' New York Times, September 8, 2012.

[222] 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.

[223] Lochner, L., and Monge-Naranjo, A. (2014). ''Default and Repayment Among Baccalaureate Degree Earners.'' NBER Working Paper No. w19882.

[224] Belfield, C. R. (2013). ''Student Loans and Repayment Rates: The Role of For-Profit Colleges.'' *Research in Higher Education,* 54(1): 1–29.

[225] Id.

[226] 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.

[227] 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.

[228] NCES. (2014). Digest of Education Statistics (Table 222). Available at: *http://nces.ed.gov/programs/digest/d12/tables/dt12_222.asp.* This table provides evidence of the growth in fall enrollment. For evidence of the growth in the number of institutions, please see the Digest of Education Statistics (Table 306) available at *http://nces.ed.gov/programs/digest/d12/tables/dt12_306.asp.*

[229] 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.

[230] U.S. Department of Education, Federal Student Aid, *Title IV Program Volume Reports,* available at *https://studentaid.ed.gov/about/data-center/student/title-iv.* The Department calculated the percentage of Federal Grants and FFEL and Direct student loans (excluding Parent PLUS) originated at for-profit institutions (including foreign) for award year 2000–2001 and award year 2013–2014.

[231] 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.

[232] Id.

[233] Id.

[234] 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.

[235] Keller, J. (2011, January 13). Facing New Cuts, California's Colleges Are Shrinking Their Enrollments. *Chronicle of Higher Education.* Available at *http://chronicle.com/article/Facing-New-Cuts-Californias/125945/.*

[236] Cellini, S. R., (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.

[237] 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.

[238] Apollo Group, Inc. (2013). Form 10–K for the fiscal year ended August 31, 2013. Available at *www.sec.gov/Archives/edgar/data/929887/000092988713000150/apol-aug312013x10k.htm.*

[239] 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.

[240] *Id.*

community college programs. Her research found the primary costs to students at for-profit institutions, including foregone earnings, tuition, and loan interest, amounted to $51,600 per year on average, as compared with $32,200 for the same primary costs at community colleges. Further, Cellini's analysis estimated taxpayer contributions, such as government grants, of $7,600 per year for for-profit institutions and $11,400 for community colleges.[241]

Because aid received from grants has not kept pace with rising tuition in the for-profit sector, in contrast to other sectors, the net cost to students has increased sharply in recent years.[242] Not surprisingly, ''student borrowing in the for-profit sector has risen dramatically to meet the rising net prices.'' [243] Students at for-profit institutions are more likely to receive Federal student financial aid and have higher average student debt than students in public and non-profit non-selective institutions.[244]

In 2011–2012, 60 percent of certificate-seeking students who were enrolled at for-profit institutions took out title IV, HEA student loans during that year compared to 10 percent at public two-year institutions.[245] Of those who borrowed, the median loan amount borrowed by students enrolled in certificate programs at two-year for-profit institutions was $6,629 as opposed to $4,000 at public two-year institutions.[246] In 2011–12, 66 percent students enrolled at for-profit institutions took out student loans, while only 20 percent of students enrolled at public two-year institutions took out student loans.[247] Of those who borrowed in 2011–12, students enrolled in associate degree programs at two-year for-profit institutions had a median loan amount borrowed during 2011–12 of $7,583 in comparison to $4,467 for students at public two-year institutions.[248]

Although student loan default rates have increased in all sectors in recent years, they have consistently been highest among students attending for-profit institutions.[249] [250] Approximately 19 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.[251] Estimates of ''cumulative lifetime default rates,'' based on the number of loans, rather than borrowers, yield average default rates of 24, 23, and 31 percent, respectively, for public, private, and for-profit two-year institutions in the 2007–2011 cohort years. Based on estimates using dollars in those same cohort years (rather than loans or borrowers to estimate defaults) the average lifetime default rate is 50 percent for students who attended two-year for-profit institutions in comparison to 35 percent for students who attended two-year public and private institutions.[252]

There is growing evidence that many for-profit programs may not be preparing students for careers as well as comparable programs at public institutions. A 2011 GAO report reviewed results of licensing exams for 10 occupations that are among the largest fields of study, by enrollment, and found that, for nine out of 10 licensing exams, graduates of for-profit institutions had lower rates of passing than graduates of public institutions.[253]

Many for-profit institutions devote greater resources to recruiting and marketing than they do to instruction or to student support services.[254] An investigation by the U.S. Senate Committee on Health, Education, Labor & Pensions (Senate HELP Committee) of 30 prominent for-profit institutions found that almost 23 percent of revenues were spent on marketing and recruiting but only 17 percent on instruction.[255] A review of data provided by some of those institutions showed that they employed 35,202 recruiters compared with 3,512 career services staff and 12,452 support services staff.[256]

Lower rates of completion at many for-profit institutions are also a cause for concern. The six-year degree/certificate attainment 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 67 percent at public institutions.[257] However, it is important to note that, among first-time undergraduate students who began at a two-year degree-granting institution in 2003–2004, the six-year degree/certification attainment rate was 40 percent at for-profit institutions compared to 35 percent at public institutions.[258]

The slightly lower degree/certification attainment rates of two-year public institutions may at least be partially attributable to higher rates of transfer from two-year public institutions to other institutions.[259] Based on available data, it appears that relatively few students transfer from for-profit institutions to other institutions. Survey data indicate about 5 percent of all student transfers originate from for-profit institutions, while students transferring from public institutions represent 64 percent of all transfers occurring at any institution (public two-year institutions to public four-year institutions being the most common type of transfer).[260]

Additionally, students who transfer from for-profit institutions are substantially less likely to be able to successfully transfer credits to other institutions than students who transfer from public institutions. According to a recent NCES study, an estimated 83 percent of first-time beginning undergraduate students who transferred from a for-profit institution to an institution in another sector were unable to successfully transfer credits to their new institution. In comparison, 38 percent of first-time beginning undergraduate students who transferred between two public institutions were unable to transfer credits to their new institution.[261]

The higher costs of for-profit institutions and resulting greater amounts of debt incurred by their students, together with generally lower rates of completion, continue to raise concerns about whether some for-profit programs lead to earnings that justify the investment made by students, and additionally, taxpayers through the title IV, HEA programs.

In general, we believe that most programs operated by for-profit institutions produce positive educational and career outcomes for students. One study estimated moderately positive earnings gains, finding that ''[a]mong 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.'' [262] However, recent evidence suggests ''students attending for-profit institutions generate earnings gains that are lower than those of students in other sectors.'' [263] The same study that found gains resulting from for-profit attendance in the range of 2 to 8 percent per year of education also found that gains for students attending public institution are ''upwards of 9 percent.'' [264] But, other studies fail to find

[241] Cellini, S. R. (2012). For Profit Higher Education: An Assessment of Costs and Benefits. *National Tax Journal,* 65 (1): 153–180.

[242] Cellini, S. R., and Darolia, R. (2013). College Costs and Financial Constraints: Student Borrowing at For-Profit Institutions. Unpublished manuscript.

[243] *Id.*

[244] 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.

[245] National Postsecondary Student Aid Study (NPSAS) 2012. Unpublished analysis of restricted-use data using the NCES PowerStats tool available at *http://nces.ed.gov/datalab/postsecondary/index.aspx*.

[246] *Id.*

[247] *Id.*

[248] *Id.*

[249] Darolia, R. (2013). Student Loan Repayment and College Accountability. Federal Reserve Bank of Philadelphia.

[250] 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.

[251] Based on the Department's analysis of the three-year cohort default rates for fiscal year 2011, U.S. Department of Education, available at *http://www2.ed.gov/offices/OSFAP/defaultmanagement/schooltyperates.pdf*.

[252] Federal Student Aid, Default Rates for Cohort Years 2007–2011, available at *www.ifap.ed.gov/eannouncements/060614DefaultRatesforCohortYears20072011.html*.

[253] Postsecondary Education: Student Outcomes Vary at For-Profit, Nonprofit, and Public Schools (GAO–12–143), GAO, December 7, 2011.

[254] For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success, Senate HELP Committee, July 30, 2012.

[255] *Id.*

[256] *Id.*

[257] ''Students Attending For-Profit Postsecondary Institutions: Demographics, Enrollment Characteristics, and 6-Year Outcomes'' (NCES 2012–173). Available at: *http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2012173*.

[258] *Id.*

[259] NCES, Transferability of Postsecondary Credit Following Student Transfer or Coenrollment, NCES 2014–163, table 8.

[260] Cellini, S.R., and Darolia, R. (2013). College Costs and Financial Constraints: Student Borrowing at For-Profit Institutions. Unpublished manuscript. Available at *www.upjohn.org/stuloanconf/Cellini_Darolia.pdf*.

[261] Darolia, R. (2013). Student Loan Repayment and College Accountability. Federal Reserve Bank of Philadelphia.

[262] Cellini, S.R., and Darolia, R. (2013). College Costs and Financial Constraints: Student Borrowing

Continued

significant differences between the returns to students on educational programs at for-profit institutions and other sectors.[265]

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.[266] Additionally, students who attend for-profit institutions and are 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.[267]

These outcomes are troubling for two reasons. First, some students will not have sufficient earnings to repay the debt they incurred to enroll in these programs. Second, because the HEA limits the amounts of Federal grants and loans students may receive, their options to transfer to higher-quality and affordable programs may be constrained as they may no longer have access to sufficient student aid.[268] 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 some for-profit institutions have taken advantage of the lack of access to reliable information about GE programs to mislead students. In 2010, the GAO released the results of undercover testing at 15 for-profit colleges across several States.[269] Thirteen of the colleges tested gave undercover student applicants ''deceptive or otherwise questionable information'' about graduation rates, job placement, or expected earnings.[270] 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.[271] 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.[272]

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.[273] 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 fraudulent marketing practices, including manipulation of job placement rates. In 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.[274] The State of Illinois sued Westwood College for misrepresentations and false promises made to students enrolling in the company's criminal justice program.[275] 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.[276] And most recently, 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.[277] The States participating include Arizona, Arkansas, Connecticut, Idaho, Iowa, Kentucky, Missouri, Nebraska, North Carolina, Oregon, Pennsylvania, Tennessee, and Washington.

Federal agencies have also begun investigations into the practices of some for-profit institutions. For example, the Consumer Financial Protection Bureau issued Civil Investigatory Demands to Corinthian Colleges, Inc. and ITT Educational Services, Inc. in 2013, demanding information about their marketing, advertising, and lending policies.[278] The Securities and Exchange Commission also subpoenaed records from Corinthian Colleges, Inc. in 2013, seeking student information in the areas of recruitment, attendance, completion, placement, and loan defaults.[279] And, the Department is also gathering and reviewing extensive amounts of data from Corinthian Colleges, Inc. regarding, in particular, the reliability of its disclosures of placement rates.[280]

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.'' [281] 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.[282] There is evidence that 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.'' [283] 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.[284] In addition, some institutions have recruited veterans with serious brain injuries and emotional

at For-Profit Institutions. Unpublished manuscript. *www.upjohn.org/stuloanconf/Cellini_Darolia.pdf.*

[265] 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.

[266] 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.

[267] *Id.*

[268] 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. 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.

[269] 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).

[270] *Id.*

[271] For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success, Senate HELP Committee, July 30, 2012.

[272] *Id.*

[273] ''U.S. to Join Suit Against For-Profit College Chain,'' The New York Times, May 2, 2011. Available at: *http://www.nytimes.com/2011/05/03/education/03edmc.html?_r=0.*

[274] ''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.*

[275] ''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/.*

[276] ''Kentucky Showdown,'' Inside Higher Ed, Nov. 3, 2011. Available at: *www.insidehighered.com/news/2011/11/03/ky-attorney-general-jack-conway-battles-profits.*

[277] ''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.*

[278] ''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.*

[279] ''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/.*

[280] U.S. Department of Education, Press Release, ''Education Department Names Seasoned Team to Monitor Corinthian Colleges.'' Available at: *www.ed.gov/news/press-releases/education-department-names-seasoned-team-monitor-corinthian-colleges.*

[281] ''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.

[282] *Id.*

[283] *Id.*

[284] *Id.*

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.[285] In 2012, an investigation by 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.[286]

Basis of Regulatory Approach

The components of the 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 (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 in the NPRM, 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 a borrower's resources.

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. 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 nor should institutions be the only parties without risk.

The third consideration is default. The Federal Government covers the cost of defaults on Federal student loans. These costs can be significant to taxpayers. Loan defaults also harm students and their families. They have to pay collection costs, their tax refunds and wages can be garnished, their credit rating is damaged, undermining their ability to rent a house, get a mortgage, or purchase a car, and, to the extent they can still get credit, they pay much higher interest. Increasingly, employers consider credit records in their hiring decisions. And, former students who default on Federal loans cannot receive additional title IV, HEA program funds for postsecondary education. *See* 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, these regulations introduce certification requirements to establish a program's eligibility and, to assess continuing eligibility, institute 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).

Regulatory Framework

As stated previously, the Department's goals in the regulations are twofold: to establish an accountability framework 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, the regulations set forth procedures to establish a program's eligibility and to measure its outcomes on a continuing basis. To establish a program's eligibility, an institution will be required to certify, among other things, 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 will be incorporated into the institution's program participation agreement.

A GE program's continuing eligibility will be assessed under the D/E rates measure, which compares the debt incurred by students who completed the program against their earnings. The regulations set minimum thresholds for the D/E rates measure. Programs with outcomes that meet the standards established by the thresholds will be considered to be passing the D/E rates measure and remain eligible to receive title IV, HEA program funds. Additionally, programs that do not meet the minimum requirements to be assessed under the D/E

[285] ''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.*

[286] ''$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.*

rates measure will also remain eligible to receive title IV, HEA program funds. Programs that are consistently unable to meet the standards of the D/E rates measure will eventually become ineligible to participate in the title IV, HEA programs.

An extensive body of research exists on the appropriate thresholds by which to measure the appropriateness of student debt levels relative to earnings. A 2006 study by Baum and Schwartz for the College Board defined ''reliable benchmarks'' to inform appropriate ''levels of debt that will not unduly constrain the life choices facing former students.'' The study determined that ''the payment-to-income ratio should never exceed 18 to 20 percent'' of discretionary income.[287] A 2001 study by King and Frishberg found that students tend to overestimate the percentage of income they will be able to dedicate to student loan repayment, and asserted that based on lender recommendations, ''8 percent of income is the most students should be paying on student loan repayment . . . assuming that most borrowers will be making major purchases, such as a home, in the 10 years after graduation.'' [288] Other studies have acknowledged or used the 8 percent standard as the basis for their work. In 2004, Harrast analyzed undergraduates' ability to repay loans and cited the 8 percent standard to define excess debt as the difference between debt at graduation and lender-recommended levels for educational loan payments, finding that in all but a few cases, graduates in the upper debt quartile exceed the recommended level by a ''significant margin.'' [289] Additionally, King and Bannon issued a report in 2002 acknowledging the 8 percent standard, and used it as the basis to estimate that 39 percent of all student borrowers graduate with unmanageable student loan debt.[290]

Several studies have proposed alternate measures and ranges for benchmarking debt burden, yet still acknowledge the 8 percent threshold as standard practice. In studying the repercussions from increasing student loan limits for Illinois' students, the Illinois Student Assistance Commission noted in 2001 that other studies capture a range from 5 percent to 15 percent of gross income, but still indicated ''it is generally agreed that when this ratio exceeds 8 percent, real debt burden may occur.'' [291] The Commission also credited the National Association of Student Financial Aid Administrators (NASFAA) with adopting the 8 percent standard in 1986, after which it picked up wide support in the field.[292] A 2003 study by Baum and O'Malley analyzing how borrowers perceive their own levels of debt, recognized 8 percent standard for student loan debt but noted that ''many loan administrators, lenders, and observers anecdotally suggest that a range of 8 to 12 percent may be considered acceptable.'' [293] This study also suggested that graduates devoting 7 percent or more of their income to student loan payments are much more likely to report repayment difficulty than those devoting smaller percentages of their incomes to loan payments. This is based on borrowers' perceptions that repayment will rarely be problematic when payments are between 7 and 17 percent. In a 2012 study analyzing whether students were borrowing with the appropriate frequency and volume, Avery and Turner noted that 8 percent was both the most commonly referenced standard and a ''manageable'' one, but referenced a 2003 GAO study that set the benchmark at 10 percent.[294]

In addition to the accountability framework, the regulations include institutional reporting and disclosure requirements designed to increase the transparency of student outcomes for GE programs. Institutions will be required to report information that is necessary to implement aspects of the regulations that support the Department's two goals of accountability and transparency. This includes information needed to calculate the D/E rates, as well as some of the specific required disclosures. The disclosure requirements will operate independently of the 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 will provide for transparency throughout the admissions and enrollment process so that students, prospective students, and their families can make informed decisions. Specifically, institutions will be required to make information regarding program costs and student completion, debt, earnings, and 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 to students, prospective students, and their families, the public, taxpayers, and the Government, and institutions; lead to a more competitive marketplace that encourages institutions to improve the quality of their programs and promotes institutions with high-performing programs; reduce costs and student debt; strengthen graduates' employment prospects and earnings; eliminate poor performing programs; and improve the return on educational investment for students, families, taxpayers, and the Government.

The D/E Rates Measure

As previously stated, as part of the accountability framework, the D/E rates measure will 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 these regulations assess the debt burden incurred by students who completed a GE program in relation to their earnings.

The D/E rates measure will 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 regulations establish the standards by which the program will 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 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. 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 will be considered to be in the zone. GE programs with a discretionary income rate over 30 percent and an annual earnings rate over 12 percent will fail the D/E rates measure. Under the regulations, a GE program will 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 that are in the zone or failing for four consecutive years. The D/E rates measure and the thresholds are intended to assess whether students who complete a GE program face excessive debt burden relative to their income.

To allow institutions an opportunity to improve, the regulations include a transition period for the first several years after the regulations become effective. During these years, the transition period and zone together will allow institutions to make improvements to their programs in order to become passing.

The D/E rates measure assesses program outcomes that, consistent with legislative intent, indicate whether a program is preparing students for gainful employment. It is designed to reflect and account for two of the three primary reasons that a program may fail to prepare students for gainful employment, with former students 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 and (2) a program provides training for an occupation for which low wages do not justify program costs. The third primary reason that a program may fail to prepare students for gainful employment is that it is experiencing a high number of withdrawals or ''churn'' because relatively large numbers of students

[287] Baum, S., & Schwartz, S. (2006). *How Much is Debt is Too Much? Defining Benchmarks for Manageable Student Debt.* New York: The College Board.

[288] King, T., & Frishberg, I. (2001). Big loans, bigger problems: A report on the sticker shock of student loans. Washington, DC: The State PIRG's Higher Education Project.

[289] Harrast, S.A. (2004). Undergraduate borrowing: A study of debtor students and their ability to retire undergraduate loans. *NASFAA Journal of Student Financial Aid, 34*(1), 21–37.

[290] King, T., & Bannon, E. (2002). *The burden of borrowing: A report on rising rates of student loan debt.* Washington, DC: The State PIRG's Higher Education Project.

[291] Illinois Student Assistance Commission (2001). Increasing college access . . . or just increasing debt? A discussion about raising student loan limits and the impact on Illinois students. Available at: *http://www.collegezone.com/media/research_access_web.pdf.*

[292] *Id.*

[293] Baum, S., & O'Malley, M. (2003). College on credit: How borrowers perceive their education. The 2002 National Student Loan Survey. Boston: Nellie Mae Corporation.

[294] Avery, C. & Turner, S., (2012). Student Loans: Do College Students Borrow Too Much—Or Not Enough? *Journal of Economic Perspectives Vol 26(1).*

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—both loans and grants. 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 (1965); S. Rep. No. 89–758, at 7 (1965). In addition to addressing Congress' concern of ensuring that students' earnings would be adequate to manage their debt, research also indicates that debt-to-earnings is an effective indicator of unmanageable debt burden. An analysis of a 2002 survey of student loan borrowers combined borrowers' responses to questions about perceived loan burden, hardship, and regret to create a ''debt burden index'' that was significantly positively associated with borrowers' actual debt-to-income ratios. In other words, borrowers with higher debt-to-income ratios tended to feel higher levels of burden, hardship, and regret.[295]

Accordingly, 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 or high unemployment. The D/E rates also provide evidence of the experience of borrowers and, specifically, where borrowers may be struggling with their debt burden.

2. Analysis of the Regulations

Data and Methodology

Data

After the effective date of reporting and disclosure requirements under the 2011 Prior Rule on July 1, 2011, the Department received, pursuant to the reporting requirements, information from institutions on their GE programs for award years 2006–2007 through 2010–2011 (the ''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[296] who did not receive title IV, HEA program funds.

Using the remaining GE Data, student loan information also stored in NSLDS, and earnings information obtained from SSA, the Department calculated two debt-to-earnings (D/E) ratios, or rates, for GE programs. These D/E rates are the annual earnings rate and the discretionary income rate. The methodology that was used to calculate both rates is described in further detail below. We refer to the D/E rates data as the ''2012 GE informational D/E rates.'' The 2012 GE informational D/E rates are stored in a data file maintained by the Department that is accessible on its Web site.[297] In addition to the D/E rates, we also calculated informational program level cohort default rates (pCDR) and repayment rates (RR).

A GE program is defined by a unique combination of the first six digits of its institution's Office of Postsecondary Education Identification (''OPEID'') code, also referred to as the six-digit OPEID, the CIP code, and the program's credential level. The terms OPEID code, CIP code, and credential level are defined below.

The 2012 GE informational D/E rates were calculated for programs in the GE Data based on the debt and earnings of the cohort of students receiving title IV, HEA program funds who completed GE programs during an ''applicable two-year cohort period,'' between October 1, 2007 and September 30, 2009 (the ''08/09 D/E rates cohort'').[298] 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. The earnings components of the D/E rates formulas were calculated for each program using information obtained from SSA for the 2011 calendar year.

Unless otherwise specified, in accordance with the regulations, the Department analyzed the 2012 GE informational D/E rates only for those programs with 30 or more students who completed the program during the applicable two-year cohort period—that is, those programs that met the minimum ''n-size'' requirements.[299] [300] Of the 37,589 GE programs for which institutions reported program information for FY 2010 to the Department, 5,539 met the minimum n-size of 30 for the 2012 GE informational D/E rates calculations.

We estimated the number of programs that would, under the provisions in the regulations for the D/E rates measure, ''pass,'' ''fail,'' or fall in the ''zone'' based on their 2012 GE informational D/E rates results.

- *Pass:* Programs with an annual earnings rate less than or equal to 8 percent *OR* a discretionary income rate less than or equal to 20 percent.
- *Zone:* Programs that are not passing and have an annual earnings rate greater than 8 percent and less than or equal to 12 percent *OR* a discretionary income rate greater than 20 percent and less than or equal to 30 percent.
- *Fail:* Programs with an annual earnings rate over 12 percent *AND* a discretionary income rate over 30 percent.

Under the regulations, a program becomes 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 that are in the zone or failing for four consecutive years. The regulations establish a transition period for the first several years after the regulations become effective on July 1, 2015, to allow institutions an opportunity to improve their D/E rates by reducing the cost of their programs or the loan debt of their students.

The Department also analyzed the estimated impact of the regulations on GE programs using the following criteria:

- *Enrollment:* Number of students receiving title IV, HEA program funds for enrollment in a program. In order to estimate enrollment, we used the unduplicated count of students receiving title IV, HEA program funds in FY 2010.[301] [302]
- *OPEID:* Identification number issued by the Department that identifies each postsecondary educational institution (institution) that participates in the Federal student financial assistance programs authorized under title IV of the HEA.
- *CIP code:* Six-digit code that identifies instructional program specialties within educational institutions. These codes are derived from the Department's National Center for Education Statistics' (NCES) Classification of Instructional Programs, which is a taxonomy of instructional program classifications and descriptions.
- *Sector:* The sector designation for a program's institution—public non-profit, private non-profit, or for-profit—using NSLDS sector data as of November 2013.[303]
- *Institution type:* The type designation for a program's institution—less than 2 years, 2–3 years, and 4 years or more—using NSLDS data as of November 2013.
- *Credential level:* A program's credential level—certificate, associate degree, bachelor's degree, post-baccalaureate certificate,

[295] Baum, S. & O'Malley, M. (2003). College on credit: How borrowers perceive their education debt. Results of the 2002 National Loan Survey (Final Report). Braintree, MA: Nellie Mae.

[296] In the ''Analysis of the Regulation'' the term ''students'' for the most part, refers to individuals who receive title IV, HEA program funds for a GE program as defined in ''§ 668.402 Definitions'' The Department's analysis of the effect of the rule is based on the defined term, but the references to commenters' analysis and some background information may refer to students more generally.

[297] *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/gainfulemployment.html.*

[298] This cohort uses fiscal years, whereas the regulations use award years for the computation of the D/E rates. Since the earnings data available are tied to cohorts defined in terms of fiscal years, the 2012 GE informational D/E rates are based on a fiscal year calendar.

[299] In comparison, for programs that do not meet this minimum n-size, programs with 30 or more students who completed the program during a four-year cohort period will also be evaluated under the regulations.

[300] The 2012 GE informational D/E rates files on the Department's Web site also include debt-to-earnings rates for variations on n-size for comparative purposes.

[301] FY 2010 enrollment is the most recent NSLDS data available to the Department regarding enrollment in GE programs. It is important to note that this data may not account reflect the overall decline in postsecondary enrollment since FY 2010.

[302] A small number of programs in the 2012 GE informational D/E rates data set did not have FY 2010 enrollment data.

[303] November 2013 NSLDS data was the closest existing data capture of sector and type to the approximate time for which rates would have been calculated for all measures evaluated in this Regulatory Impact Analysis.

master's degree, doctoral degree, and first professional degree.[304]

Methodology for D/E Rates Calculations

The methodology used by the Department to calculate the 2012 GE informational D/E rates departs slightly in some cases from the provisions in the regulations. We have identified those departures in footnotes.

As stated previously, the D/E rates measure is comprised of two debt-to-earnings ratios, or rates. The first, the discretionary income rate, is based on discretionary income, and the second, the annual earnings rate, is based on annual earnings. The formulas for the two D/E rates are:

$$\text{discretionary income rate} = \frac{\text{annual loan payment}}{\text{discretionary income}}$$

$$\text{annual earnings rate} = \frac{\text{annual loan payment}}{\text{annual earnings}}$$

For the 2012 GE informational D/E rates, the annual earnings rates and discretionary income rates calculations are truncated two digits after the decimal place.

Although the Department calculated D/E rates for programs with an n-size of 10 or more, for the ''Student demographics analysis of the final regulations'' and ''Impact Analysis of Final Regulations'' sections of the RIA, the Department analyzed only those programs in the 2012 GE informational D/E rates data set with an n-size of 30 or more students who completed programs during the applicable two-year cohort period (FYs 2008–2009). It is important to note that under the regulations, if less than 30 students completed a program during the two-year cohort period, a four-year cohort period will be applied. If 30 or more students completed the program during the four-year cohort period, D/E rates will be calculated for that program. The 2012 GE informational D/E rates data set does not apply the four-year cohort period ''look back'' provisions.

A program's annual loan payment is the median annual loan payment of the 08/09 D/E rates cohort and is calculated based on the cohort's median total loan debt.[305]

- Each student's total 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 the student received for enrollment in the program.[306]
- In cases where a student completed multiple GE programs at the same institution, all loan debt is attributed to the highest credentialed program that the student completed and the student is not included in the calculation of D/E rates for the lower credentialed programs that the student completed.
- The total loan debt associated with each student is capped at an amount equivalent to the program's tuition and fees[307] if: (1) Tuition and fees information for the student was provided by the institution, and (2) the amount of tuition and fees was less than the student's total loan debt. This tuition and fees cap was applied to approximately 15 percent of student records for the 08/09 2012 D/E rates cohort.
- 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 earnings calendar year, as defined below, or whose loans were discharged because of disability or death.

The median annual loan payment for each program was derived from the median total loan debt by assuming an amortization period and annual interest rate based on the credential level of the program.

- Amortization period:
  - 10 years for undergraduate certificate, associate degree, and post-baccalaureate certificate programs;[308]
  - 15 years for bachelor's and master's degree programs;
  - 20 years for doctoral and first professional degree programs.[309]
- Interest rate:
  - 6.8 percent for undergraduate certificate and associate degree programs;
  - 6.8 percent for post-baccalaureate certificate and master's degree programs;
  - 5.42 percent for bachelor's degree programs;
  - 5.42 percent for doctoral and first professional programs.

For undergraduate certificate, associate degree, post-baccalaureate certificate, and master's degree programs, the rate is the average interest rate on Federal Direct Unsubsidized loans over the three years prior to the end of the applicable cohort period, in this case, the average rate over 2007–2009. For bachelor's degree, doctoral, and first professional programs, the rate is the average interest rate on Federal Direct Unsubsidized loans over the six years prior to the end of the applicable cohort period, in this case, the average rate over 2004–2009. For undergraduate programs (certificate, associate degree, bachelor's degree), the undergraduate Unsubsidized rate was applied, and for graduate programs (post-baccalaureate certificate, master's, doctoral, first professional) the graduate rate was applied.[310]

The annual earnings for the annual earnings rate calculation is either the mean or median annual earnings, whichever is higher, of the 08/09 D/E rates cohort for the calendar year immediately prior to the fiscal year for which the D/E rates are calculated. In this case, the D/E rates were calculated for the 2012 fiscal year. Accordingly, annual earnings were obtained from the SSA for the 2011 calendar year. Annual earnings include wages, salaries, tips, and self-employment income.

For calculating the discretionary income rate, discretionary income is the amount of the program's mean or median, whichever is applicable, annual earnings above 150 percent of the Federal Poverty Guideline for a single person in the continental United States (FPL) for the annual earnings calendar year, in this case 2011, as published by the U.S. Department of Health and Human Services. The FPL for 2011 was $10,890.[311] [312]

Methodology for pCDR Calculations

Program cohort default rates (''pCDR'') measure the proportion of a program's borrowers who enter repayment on their loans in a given fiscal year that default within the first three years of repayment. The formula for pCDR is:

[304] In the final regulations the definition of ''credential level'' has been revised to clarify that postgraduate certificates are included in the post-baccalaureate certificate credential level.

[305] We used fiscal years for the computation of the 2012 GE informational D/E rates, whereas the regulations use award years.

[306] In comparison, under the regulations, Perkins loans will also be included in total loan debt. As such, informational rates analysis results should be considered an approximation of the implementation of the GE regulation.

[307] Under the regulations, loan debt is capped for each student at the amount charged for tuition and fees, books, supplies, and equipment.

[308] The regulations clarify that postgraduate certificates would be included in the post-baccalaureate certificate credential level.

[309] The 2012 GE informational rates files also include debt-to-earnings rates calculated using variations of the amortization schedule for comparative purposes.

[310] For the 2012 informational D/E rates cohort, the applicable average interest rates are the same for undergraduate and graduate programs. In comparison, undergraduate and graduate interest rates differ from each other in future cohort periods.

[311] 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. The Department used the 2011 Poverty Guideline of $10,890 to conduct our analysis.

[312] Informational rates published in the past may have used a different year's Poverty Guideline.

$$pCDR = \frac{\text{borrowers whose loans are in default}}{\text{borrowers whose loans entered repayment}}$$

The pCDR calculations are truncated to two-digits after the decimal point.

Generally, we analyzed pCDR only for those programs with a minimum n-size of 30 or more borrowers whose FFEL and Direct Loans for enrollment in the program entered repayment between October 1, 2008 and September 30, 2009 (FY 2009). However, if fewer than 30 students entered repayment during that fiscal year, we also included borrowers who entered repayment over the previous two fiscal years, October 1, 2006 to September 30, 2008 (FYs 2007 and 2008). If a program still did not reach 30 borrowers entering repayment, then a pCDR was not calculated. Of the 5,539 programs in the 2012 informational D/E rates data, 4,420 met the pCDR n-size requirements.[313] We refer to the pCDR data as the ''2012 GE informational pCDRs.''

For the 2012 GE informational pCDRs, the denominator of the calculation is the number of borrowers whose loans entered repayment on their FFEL or Direct Loans in FY 2009, or if applicable, in FYs 2007–2009. The numerator of the calculation is the number of those borrowers who defaulted on FFEL or Direct Loans on or before September 30, 2011 (or if applicable, on or before September 30, 2009 and September 30, 2010 for borrowers entering repayment in FYs 2007 and 2008 respectively).

Methodology for Repayment Rate Calculations

Repayment rates measure the proportion of a program's borrowers who enter repayment on their loans in a given fiscal year that paid one dollar of principal in their third year of repayment. We refer to the repayment rate data as the 2011 GE informational repayment rates. The formula for repayment rate is:

$$RR = \frac{\text{loans paid in full + loans in active repayment}}{\text{original outstanding principal balance}}$$

Repayment rates were calculated by program for students who entered repayment on FFEL or Direct Loans received for enrollment in the program between October 1, 2006 and September 30, 2008 (FYs 2007 and 2008). We refer to these data as the ''2011 GE informational repayment rates.''

For the 2011 GE informational repayment rates, the denominator of the calculation is the total original outstanding principal balance of FFEL and Direct Loans for borrowers who entered repayment in FYs 2007 and 2008. The numerator of the calculation is the total original outstanding principal balance of FFEL and Direct Loans for borrowers who entered repayment in FYs 2007 and 2008 on loans that have never been in default and that are fully paid *plus* the total original outstanding principal balance of FFEL and Direct Loans for borrowers who entered repayment in FYs 2007 and 2008 on loans that have never been in default and, for the period between October 1, 2010 and September 30, 2011 (FY 2011), whose balance was lower by at least one dollar at the end of the period than at the beginning. To account for negative amortization loans where borrowers could have been making full payments but still not paying down a dollar of principal, 3 percent of the original outstanding principal balance in the denominator was added to the numerator.

Student Demographics Analysis

In the 2014 NPRM, the Department provided the results of several regression analyses examining the relationship between demographic factors and program results under the D/E rates and pCDR measures. Several commenters cited to analysis by Charles River Associates and the Parthenon Group arguing that the Department provided insufficient detail regarding the methodology, data sources and data cleaning process, and types of regression models and variables it used for the regression analysis. These commenters also asserted that the Department should have reported more results than the R-squared statistics. Specifically, they contended that the Department should have provided the point-estimates and T-statistics. Although we believe that we sufficiently explained our analysis in the NPRM, we restate our analysis in greater detail here. We then provide the results of the Department's student demographic analysis of the final regulations.

Explanation of Terms

A regression analysis is a statistical method that can be used to measure relationships between variables. The demographic variables we analyze, provided below, are referred to as ''independent'' variables because they represent the potential inputs or causes of outcomes. The annual earnings rate and pCDR measures are referred to as ''dependent'' variables because they are the variables on which the effect of the independent variables are examined.

The output of a regression analysis contains several relevant points of information. The ''coefficient,'' also known as the point estimate, for each independent variable is the average amount that a dependent variable, in this case the annual earnings rate and pCDR, is expected to change with a one unit change in the associated independent variable, holding all other independent variables constant. The ''T-statistic'' is the ratio of the coefficient to its standard error. The T-statistic is commonly used to determine whether the relationship between the independent and dependent variables is ''statistically significant.'' The ''R-squared'' is the fraction of the variance of the dependent variable that is explained by the independent variables.

Student Demographics Analysis of 2014 NPRM

Methodology for Student Demographics Analysis of 2014 NPRM

In the 2014 NPRM, the Department examined the association between demographic factors (independent variables) and the annual earnings rate and, separately, the pCDR measure (dependent variables). The Department did not conduct a regression analysis for the discretionary income rate because the discretionary income rate is simply a linear transformation of the annual earnings rate. As a result, the relationships that demographic factors have with the annual earnings rate will be broadly similar to those with the discretionary income rate.

For the NPRM, we used an ordinary least squares regression (robust standard errors), a common methodology that is used to model the relationship between a dependent variable and one or more independent variables by fitting a linear equation to observed data. One commenter argued that a Tobit regression would be more appropriate but, based on the commenter's own analysis, acknowledged that both approaches lead to similar results. Because the ordinary least squares regression model is widely used, easily understood, and would not yield substantially different results, we have not changed our methodology for the student demographics analysis of the final regulations.

The first set of analysis we conducted examined the association of socioeconomic background and race and ethnicity with program outcomes. In performing these analyses, the Department used 2012 GE informational rate data, NSLDS data, and data reported by institutions to the Integrated Post-Secondary Education Data System (IPEDS).

The Department chose to use the proportion of title IV students enrolled in

[313] The pCDR n-size requirements apply to borrowers while the D/E rates n-size requirements apply to students who complete the program.

programs who were Pell Grant recipients (percent Pell) as a proxy for the average socioeconomic background of the students in GE programs because household income is the primary determinant of whether students qualify for Pell Grants. For both the annual earnings rate analysis and pCDR analysis, the proportion of Pell Grant recipients in each program was drawn from NSLDS. The percent Pell variable was determined by calculating the percentage of programs' students who entered repayment on title IV, HEA program loans between October 1, 2007 and September 30, 2009, who also received a Pell Grant for attendance at the programs' respective institutions between July 1, 2004 and July 30, 2009. The Department chose this five-year timeframe so that students who may have received a Pell Grant for a prior course of study but were no longer in economic hardship when they enrolled in the program being analyzed would not be assigned low socioeconomic status. We determined percent Pell for 4,938 of the 5,539 programs in the 2012 GE informational D/E rates data. We were unable to determine the percent Pell for all programs in the annual earnings rate regression analysis because some programs with a sufficient number of students who completed the program (30) between October 1, 2007 and September 30, 2009, to calculate D/E rates did not have any students entering repayment on title IV, HEA program loans during that period. For the pCDR regression analysis, we determined percent Pell for all programs in the 2012 GE informational pCDR data.

Because the Department does not collect race or ethnicity information from individual students receiving title IV, HEA program funds, we used data from IPEDs to estimate the proportion of minority students in programs (percent minority). The estimates for percentage of minority students in programs were derived differently for the annual earnings rate analysis and the pCDR analysis.

For the annual earnings rate analysis, we used the proportion of minority individuals who completed GE programs as reported in IPEDS 2008. For the purpose of this analysis, the term ''minority'' refers to individuals from American Indian or Alaska Native (Indian), Black or African American (Black), Hispanic or Latino/Hispanic (Hispanic), backgrounds, race and ethnicity groups that have historically been and continue to be underrepresented in higher education. For the annual earnings rate regression analysis, we determined percent minority for 3,886 of the 5,539 programs in the 2012 GE informational D/E rates data set. The remaining programs were excluded in the annual earnings rate regression. Many programs could not be matched primarily because IPEDS and NSLDS use different reporting mechanisms. For example, IPEDS and NSLDS use different unit identifiers for institutions. In addition, in reporting to the two systems, different CIPs are sometimes used. As a result, using IPEDS data for percent minority restricts the data set and provides at best an approximation of the racial and ethnic makeup of each program.

One commenter provided their own analysis using IPEDS data and argued that IPEDS data requires cleaning and manipulation. This commenter adjusted the IPEDS data for instances where the race and ethnicity categories do not add up to 100 percent, removed Puerto Rican programs from the sample, converted 2000 CIP codes to 2010 CIP codes, and aggregated branch programs reported in IPEDS to the GE program level. In the NPRM analysis, the Department converted IPEDS credential levels to GE credential levels and IPEDS OPEIDs [314] to six-digit OPEIDs and then aggregated the number of individuals who completed to the GE program level defined by unique combinations of six-digit OPEID, CIP code, and credential level in order to match IPEDS data to GE data. We did not adjust CIP codes or remove specific programs. Since then, the Department re-ran the analysis with all CIP codes converted to 2010 CIP codes, but results were not materially different. One commenter asserted that the proportion of individuals across categories of race and ethnicity may not add up to 100 percent for every program as a result of reporting errors to IPEDS.[315] However, the Department confirmed that the proportion of students in all race and ethnicity categories totaled to 100 percent of the total completions for each program in IPEDS. We do not agree that certain programs, such as Puerto Rican programs, should be removed as all programs under the regulation are relevant for the student demographics analysis.

As noted above, the sample size was limited for the percent Pell and minority variables. We determined percent minority for 3,886 and percent Pell for 4,938 of the 5,539 programs in the 2012 GE informational D/E rates data set. The resulting sample size of programs for which we determined both variables was 3,455. This may have biased the sample because the average annual earnings rate was 6.2 percent (standard deviation = 4.7 percent) compared to an average annual earnings rate of 4.2 percent (standard deviation = 4.6 percent) for the sample that did not have corresponding demographic data.

For the pCDR measure analysis, we used institution-level fall 2007 IPEDs data as a proxy for program-level percentages of minority students. Since the pCDR measure includes both students who do and who do not complete a program, there was no direct way in the data the Department had available to fully measure the race or ethnicity of students in the pCDR cohorts. The Department elected not to use the IPEDS program-level race or ethnicity data for individuals who completed a program because the race or ethnicity of students who completed a given GE program might differ substantially from the race or ethnicity of students who did not complete.

One commenter asserted that the use of institution-level data was not an appropriate methodology for this type of analysis. We acknowledge that institution-level data does not perfectly measure program-level demographic characteristics; however, there was no better source of data to approximate, at the program level, the percentage of minority students who both complete and do not complete a program.

While the first set of regression models in the NPRM analyzed the simple relationships between socioeconomic status and race or ethnicity and outcomes, the second set of regression models in the NPRM examined the effects of a broader range of characteristics on outcomes by controlling for the following additional independent variables:

- Institution Sector and Type: Public <2 years, Public 2–3 years, Public 4+ years, Private <2 years, Private 2–3 years, Private 4+ years, For-Profit <2 years, For-Profit 2–3 years, For-Profit 4+ years.
- Credential Level: (01) Undergraduate certificate, (02) Associate degree, (03) Bachelor's degree, (04) Post-Baccalaureate certificate, (05) Master's degree, (06) Doctoral degree, (07) First Professional degree.
- Percentage of students that were:
  - Female.
  - Over the age of 24. We considered age over 24 as an indicator of nontraditional students because most traditional students begin their academic careers at an earlier age.
  - Had a zero estimated family contribution (EFC). We consider zero EFC status as an indicator of socioeconomic status because EFC is calculated based on household income.

The percent female, above age 24, and zero EFC for each program was determined using 2008 demographic profile data in NSLDS on students who entered repayment on title IV, HEA loans between October 1, 2007 and September 30, 2009. Some students who entered repayment in this time period did not have a 2008 demographic profile, so not all programs in the 2012 GE informational D/E rates and pCDR data sets had corresponding demographic data. Further, we were unable to determine the percent female, above age 24, and zero EFC for all programs in the annual earnings rate regression analysis because some programs with a sufficient number of students who completed the program (30) between October 1, 2007 and September 30, 2009, to calculate D/E rates did not have any students entering repayment on title IV, HEA program loans during that period. For the annual earnings rate regression analysis, we determined percent female, above age 24, and zero EFC for 4,687 of the 5,539 programs in the 2012 GE informational D/E rates data set. The resulting sample size of programs for which we determined all of the variables was 3,282. This may have biased the sample because the average annual earnings rate of these programs was 6.6 percent (standard deviation = 4.7 percent) compared to an average annual earnings rate of 3.9 percent (standard deviation = 4.6 percent) for the sample that did not have corresponding demographic data.

One commenter asserted that more variables should have been used in the regression, specifically enrollment status, average amount of title IV, HEA program funds received, and credential level. The

[314] IPEDS 2011 OPEIDs used because that would be close to the time of calculation of rates for the cohort.

[315] The denominator of percent minority includes all race categories including American Indian, Asian, Black, Hispanic, White, Two or More Races, Race Unknown, Nonresident Alien.

commenter asserted that average amount of title IV, HEA program funds received is a better proxy of income than percent Pell because it provides detail on income level. Although credential level was not identified as a variable in the description of the NPRM regression analysis, it was among the variables included in the second set of regression models in the NPRM. We did not include amount of title IV, HEA program funds received as a variable, however, because it is sensitive to cost of attendance and other factors. Finally, we did not include enrollment status because we were more accurately able to determine at the program level age above 24, which, like enrollment status, is also a proxy for nontraditional students.

One commenter argued that the sample of programs for the student demographics analysis was not large enough because it was limited to only programs in the 2012 GE informational D/E rates and pCDR data sets. As evidence of this, the commenter asserted that the top four program categories (health, business, computer/information science, and personal and culinary services) comprise 50 percent of the overall universe but 70 percent of the sample. We believe it is appropriate to analyze only those programs that our data estimates will be assessed under the regulations. Further, we do not believe the sample size is too small as there is significant variation within the sample of programs we analyzed. For example, percent Pell of the programs analyzed ranges from zero to 100 percent with a standard deviation of 25 percent (mean = 65 percent). The percent minority of the programs analyzed also ranges from zero to 100 percent with a standard deviation of 31 percent (mean = 36 percent).

Results of Student Demographics Analysis of 2014 NPRM

The results of the Department's student demographics regression analyses of the 2014 NPRM using annual earnings rates as the dependent variable are restated in greater detail below. We do not provide the same for the analysis using pCDR as the dependent variable as pCDR is not an accountability metric in the final regulations.

Table 2.1: Annual earnings rate regression- percent Pell & minority status (2014 NPRM version)

	Coefficient	Robust standard error	T-statistic	P-value
Minority	-0.01	0.003	-1.89	0.059
Pell	0.021	0.004	5.25	0

In order to investigate the criticism that the annual earnings rate measures primarily the socioeconomic status and racial/ethnic composition of the student body, the Department regressed program annual earnings rates on percent Pell and percent minority. As Table 2.1 shows, the Department found that programs with higher proportions of students who received Pell Grants tended to have slightly higher annual earnings rates, when controlling for percent minority. This relationship is statistically significant, but is small in magnitude. The results suggest that a one percent increase in a program's percentage of Pell students yields a 0.02 percent (coefficient) increase in the annual earnings rate. The T-statistic for minority status indicates the relationship between the percent minority variable and the annual earnings rate is not statistically significant when controlling for percent Pell.

Further, percent Pell and percent minority explained approximately one percent (R-squared) of the variance in annual earnings rate results. This suggests that a program's annual earnings rate is influenced by much more than the socioeconomic and minority status of its students.

Table 2.2: Annual earnings rate regression- all independent variables (2014 NPRM version)

Number of obs	3282			
R-squared	0.3583			
	Coefficient	**Robust standard error**	**T-statistic**	**P-value**
Minority	-0.012	0.003	-3.870	0.000
Pell	-0.006	0.005	-1.130	0.260
Zero EFC	0.040	0.007	5.940	0.000
Female	0.001	0.002	0.510	0.608
Above age 24	-0.047	0.004	-11.800	0.000
Private4	-1.043	0.510	-2.050	0.041
Private<2	0.262	0.491	0.530	0.593
For-Profit2-3	1.330	0.303	4.390	0.000
For-Profit4	3.029	0.387	7.830	0.000
For-Profit<2	0.980	0.312	3.140	0.002
Public2-3	-3.006	0.303	-9.920	0.000
Public4	-2.330	0.517	-4.510	0.000
Public<2	-1.594	0.343	-4.650	0.000
Level_2	2.420	0.240	10.080	0.000
Level_3	3.080	0.438	7.040	0.000
Level_4	0.464	0.568	0.820	0.415
Level_5	-1.514	0.600	-2.520	0.012
Level_6	-2.974	0.737	-4.040	0.000
Level_7	0.635	4.629	0.140	0.891
Constant	6.495	0.493	13.170	0.000
Private 2-3 years used as reference group for sector and credential level 01 (undergraduate certificate) used as reference group for credential levels				

To investigate whether other demographic or non-demographic factors could explain more of the variation in program annual earnings rates, the Department conducted a second regression with additional independent variables. The second regression used percent zero EFC, female, and above age 24 as independent variables in addition to percent Pell and percent minority. We controlled for the sector and type of a program's institution and the credential level of the program. Holding constant other demographic, program, and institutional characteristics, the relationship between percent Pell and the annual earnings rate was no longer statistically significant. Another indicator of socioeconomic status, percent zero EFC, was positively associated with program annual earnings rate. However, interpretations of the percent Pell and percent zero EFC coefficients should be taken with caution because percent Pell and percent zero EFC are highly correlated (correlation coefficient = 0.72). These correlations are taken into account in the student demographics analysis of the final regulations provided below. In addition, percent above 24 was negatively associated with program annual earnings rate. Almost 36 percent (R-squared) of the variance in annual earnings rate results can be explained by the variables used in this analysis.

Several commenters referenced reports by Charles River Associates and the Parthenon Group which attempted to replicate the Department's regression analysis in the NPRM using publicly available data and included additional analysis of the relationship between student characteristics and debt-to-earnings ratios using student-level data from a sample of for-profit institutions. The Parthenon Group analyzed Health-related programs, and engaged in a process to clean IPEDS data, which resulted in a sample set of 1,095 programs. The Parthenon Group asserted that the results of their regression analysis with annual earnings rate as the dependent variable and minority status, gender, age, Pell eligibility, average aid, enrollment status, and degree level as independent variables indicated that student characteristics explained 47 percent of the variance in annual earnings rates. The Parthenon Group's analysis with pCDR as the dependent variable concluded that 63 percent of the variation resulted from student characteristics. Charles River Associates' analysis used annual earnings rate and the pCDR from the 2012 GE informational D/E rates and pCDRs as dependent variables and IPEDS institutional Pell Grant data and program-level race and ethnicity data on the percentage of students who are Black, Indian, or Hispanic as independent variables. The R-squared value of the Charles River Associates model was 0.025 compared to less than 0.02 in the Department's analysis. From its analysis, Charles River Associates concluded that Pell Grant status had a positive and significant relationship with both annual earnings rate and pCDR and minority status was positively correlated with pCDR but there was no statistically significant relationship between minority status and annual earnings rate.

Student Demographics Analysis of Final Regulations

In response to the NPRM, commenters asserted that the proposed regulations primarily measure student characteristics instead of program quality and that the regulations would deny postsecondary opportunities to low-income, minority, and female students by restricting access to postsecondary education. Some commenters conducted their own analyses with both publicly available data from IPEDS and non-publicly available data from several for-profit institutions. These commenters argued their analysis shows that the Department underestimated the explanatory power of student demographics on program results and that student demographics play an important part in explaining postsecondary outcomes.

Specifically, Charles River Associates conducted an analysis using student-level data for 10 different for-profit institutions combining NSLDS data with demographic information provided by institutions. These data were used in logistic regressions with three dummy dependent variables representing whether students completed, ever borrowed, or defaulted. The results were a series of odds ratios for propensity to graduate, borrow, and default that indicated that minority and Pell status matter for student outcomes. Among the findings were that African American students were less likely to borrow than white students (.92 percent compared to a reference group of white students), but 13 percent more likely to default. Hispanic students were not statistically different from white students with respect to the likelihood of graduation, but were 13 percent more likely to borrow and 36 percent more likely to default. Students who received Pell Grants were two times more likely to graduate and five times more likely to borrow, and, among students who borrow, 14 percent more likely to default. When limited to students who complete a program, Pell Grant recipients were 3.8 times more likely to borrow and 20 percent more likely to default than students who do not receive a Pell Grant. Regression with the another dependent variable, cumulative amount borrowed, indicated that the strongest predictors of amount borrowed are credential level and completion status, with students who do not complete borrowing approximately $6,700 less than students who do complete after accounting for the factors in the model.

To respond to these comments and to further examine the relationship between student demographics and program results under the annual earnings rate, the Department conducted additional analysis for the final regulations.

Methodology for Student Demographic Analysis of Final Regulations

Similar to the NPRM methodology, the Department used ordinary least squares regressions to examine the relationship between student demographics and the program results under the final regulations. In addition, the Department conducted descriptive analyses of the 2012 GE informational D/E rates programs. Specifically, we examined the demographic composition of programs, comparing the composition of passing, zone, and failing programs.

We conducted regression analysis using only annual earnings rate as the dependent variable because pCDR is not an accountability metric in the final regulations. For this analysis, percent white, Black, Hispanic, Asian, Indian, two or more races, female, zero EFC, independent, and mother completed college, institutional sector and type, and program credential level were used as independent variables.[316]

For the race and ethnicity variables, we used the proportion of individuals in each race and ethnicity category reported in the IPEDS 2008 data set. To match the IPEDS data to the 2012 GE informational D/E rates data set, the Department converted IPEDS credential levels to GE credential levels, converted IPEDS OPEIDs to six-digit OPEIDs, and converted all CIP codes to 2010 CIP codes.[317] We aggregated the number of completions reported for each program in IPEDS to the corresponding GE program definition of six-digit OPEID, CIP code, and credential level. While D/E rates measure only the outcomes of students who completed a program and received title IV, HEA program funds, IPEDS completions data include both title IV graduates and non-title IV graduates. We believe the IPEDS data provides a reasonable approximation of the proportion, by race and ethnicity, of title IV graduates completing GE programs. Unlike the NPRM analysis, we did not group multiple race and ethnicity categories into a single minority status variable because definitions of minority status may vary.[318] For the annual earnings rate regression analysis, we determined percent of each race and ethnicity category for 4,173 of the 5,539 programs in the 2012 GE informational D/E rates data set. Many programs could not be matched primarily because, as stated above, IPEDS and NSLDS use different reporting mechanisms, and the two reporting systems may not be consistent in matching data at the GE program-level. Because this resulted in a limited data set, the regression analysis was conducted both with and without the percent race and ethnicity variables.[319]

Percent Pell for this analysis is the percentage of title IV students who completed a GE program between October 1, 2007 and September 30, 2009, who received a Pell Grant at any time in their academic career. Unlike the determination of percent Pell in the NPRM, which was based on all borrowers, we determined percent Pell based on all students who completed a program because those are the students whose outcomes are assessed by the annual earnings rate. Further, because Pell status is being used as a proxy for socioeconomic background, we counted students if they had received a Pell Grant at any time in their academic career, even if they did not receive it for enrollment in the program.

The following variables that were used in the NPRM analysis were also used in the analysis for the final regulations:

- Institution Sector. Public, Private, or For-Profit
- Credential Level. (01) Undergraduate certificate, (02) Associate degree, (03) Bachelor's degree, (04) Post-Baccalaureate certificate, (05) Master's degree, (06) Doctoral degree, (07) First Professional degree.
- Percentage of students:
  - Female.
  - Zero EFC. We consider zero EFC status as an indicator of socioeconomic status because EFC is calculated based on household income.

The percentage of students with the following characteristics were used as additional variables in the analysis for the final regulations but were not used in the NPRM analysis:

- Independent. Independent status is determined by a number of factors, including age, marital status, veteran status, and whether a student is claimed as a dependent by anyone for purposes of a tax filing.[320] We consider independent students as an indicator that the student is non-traditional because most traditional students begin their studies as dependents.
- Married. Students who were married at the beginning of their academic careers. We consider married status to indicate the student is non-traditional because most traditional students are unmarried at the start of their academic careers.
- Mother of Students with College Education. Students whose mothers completed college. Children of mothers who completed college are more likely to attend and complete college.[321]

The percent female, zero EFC, independent, married, and with mothers who completed college for each program were determined from the earliest demographic record (post-1995) in NSLDS for any title IV student who completed a GE program between October 1, 2007 and September 30, 2009. Unlike the determination of percentages of these variables in the NPRM, which was based on all borrowers, we determined the percentage of each of these variables based on all students who completed a program because those are the students whose outcomes are assessed by the annual earnings rate. Also, we determined these characteristics from each student's earliest NSLDS record rather than just their status while in the program since these

[316] The annual earnings rate for this analysis differs slightly from the annual earnings rate used in the NPRM in that it reflects interest rate changes made to the regulations since the NPRM.

[317] IPEDS 2011 OPEIDs used because that would be close to the time of calculation of rates for the cohort.

[318] The proportion of students who completed programs in the race unknown and nonresident alien categories were not considered in the Department's analysis.

[319] Unmatched programs may bias results that include race/ethnicity variables. The sample with matched programs had a mean annual earnings rate of 5.6 (standard deviation = 5) in comparison to the sample that did not match which had a mean annual earnings rate of 6.4 (standard deviation = 5).

[320] Details on determining dependence/independence are available at *https://studentaid.ed.gov/fafsa/filling-out/dependency#dependent-or-independent.*

[321] Goldrick-Rab, S., and Sorensen, K. (2010, Fall). Unmarried Parents in College, Future of Children, Journal Issue: Fragile Families (20).

characteristics are being used as a proxy for socioeconomic background or to indicate that the student is non-traditional. With respect to these variables, we determined the composition of over 99 percent of the programs in the 2012 GE informational D/E rates data set.

Table 2.3 provides the program level descriptive statistics for the demographic variables.

Table 2.3: Descriptive Statistics of the Demographic Variables

Variable	Observations	Median	Mean	Standard deviation	Minimum	Maximum
Percent Asian	4,173	1.1	4.5	10.8	0.0	100.0
Percent Black	4,173	10.3	18.4	21.7	0.0	100.0
Percent Hispanic	4,173	7.1	19.3	27.5	0.0	100.0
Percent Indian	4,173	0.0	1.0	3.6	0.0	85.0
Percent Two or More Races	4,173	0.0	0.2	1.1	0.0	23.8
Percent White	4,173	63.2	56.6	31.9	0.0	100.0
Percent Zero EFC	5,537	40.2	42.0	21.3	0.0	100.0
Percent Independent	5,537	56.4	53.7	19.0	0.0	100.0
Percent Female	5,537	81.5	67.0	31.9	0.0	100.0
Percent Mothers College	5,537	25.0	26.3	11.4	0.0	100.0
Percent Pell	5,537	78.6	75.3	18.2	0.0	100.0

Student demographics descriptive analysis of final regulations

Table 2.4: Percent White, Black, Hispanic, Pell, Zero EFC, Female, Independent, Married, and Mothers Completing College in Passing, Zone, and Failing Programs

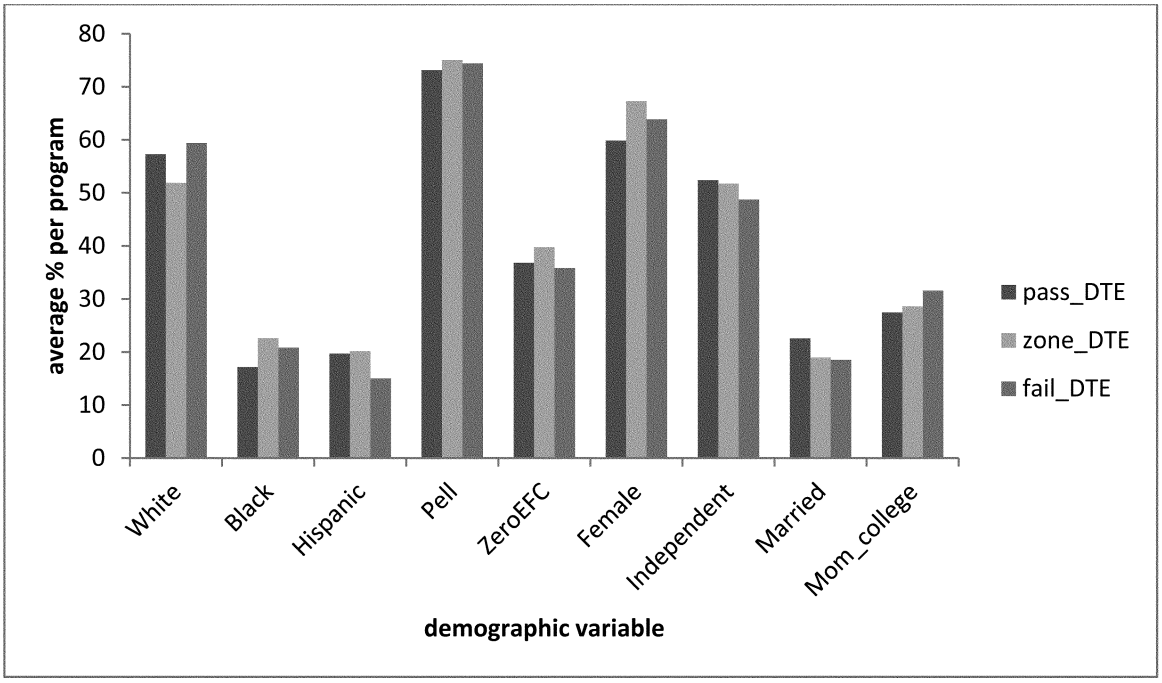
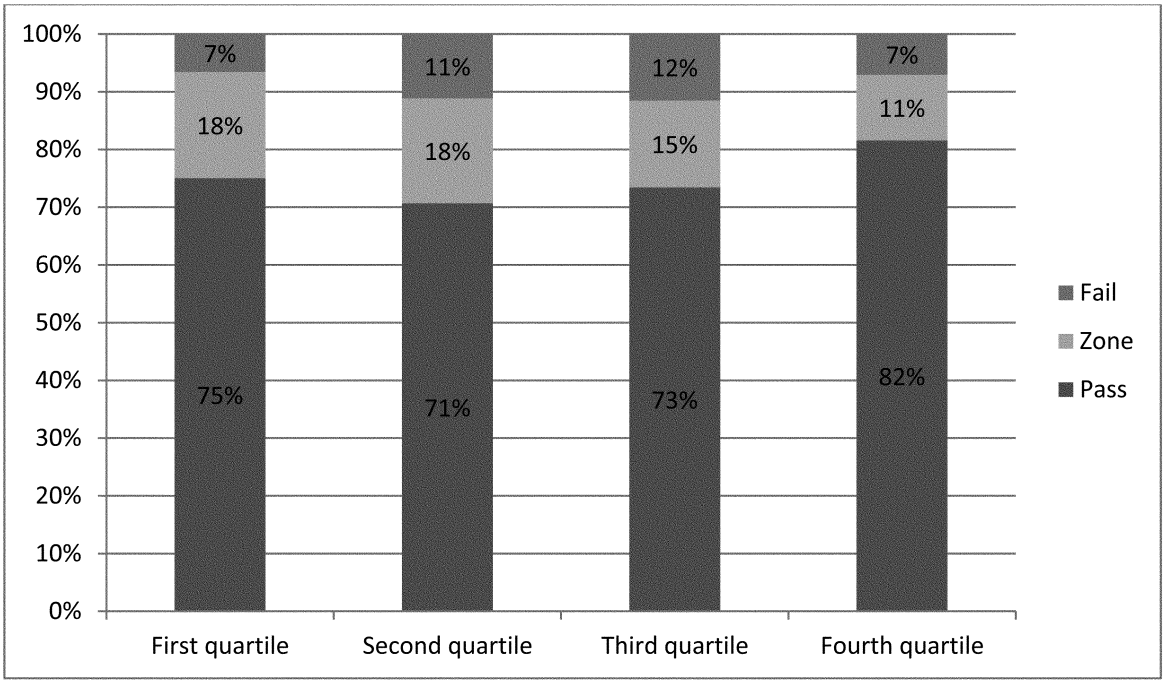


Table 2.4 shows that passing, zone, and failing programs have very similar proportions of low-income, non-traditional, female, white, Black, and Hispanic students.[322]

[322] Average percent Asian was similar across passing, zone, and failing programs (all categories between four and five percent), average percent American Indian was also similar across the categories (roughly one percent in all categories).

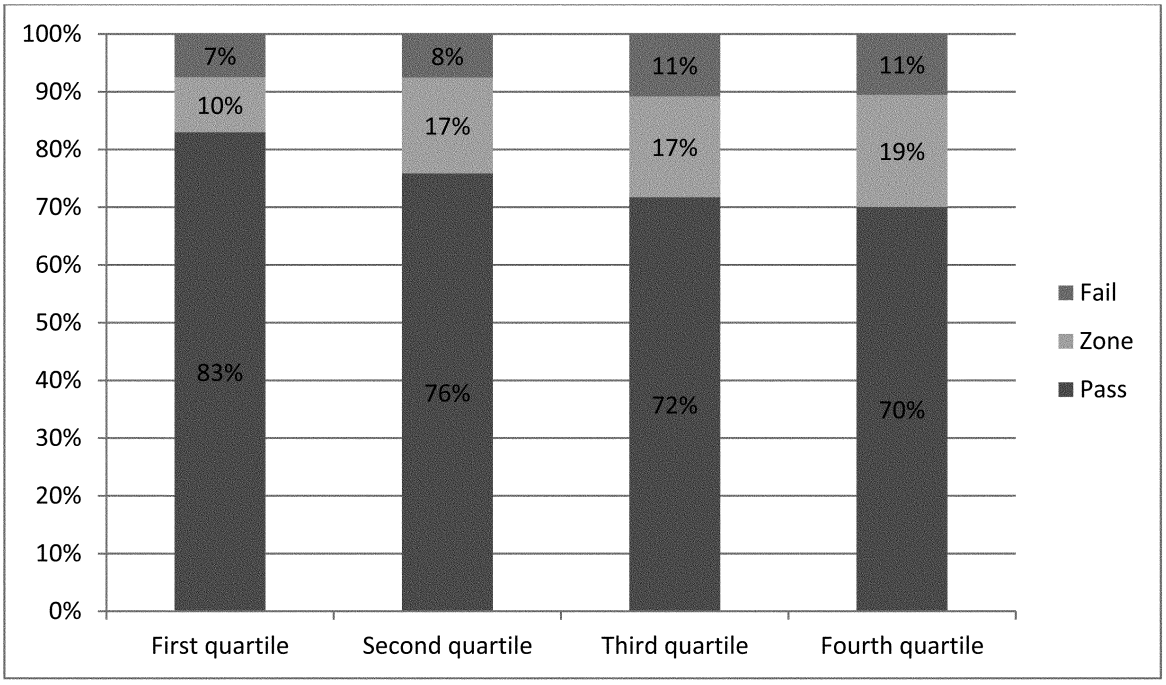
Table 2.5: Number of Passing, Zone, and Failing Programs Disaggregated by Quartiles* of Percent White



*The first quartile represents the programs with the lowest proportion of white students and the fourth quartile represents programs with the highest proportion.

Table 2.5 shows that the passing rates across all quartiles of percent white are similar, except the fourth quartile has a slightly higher passing rate.

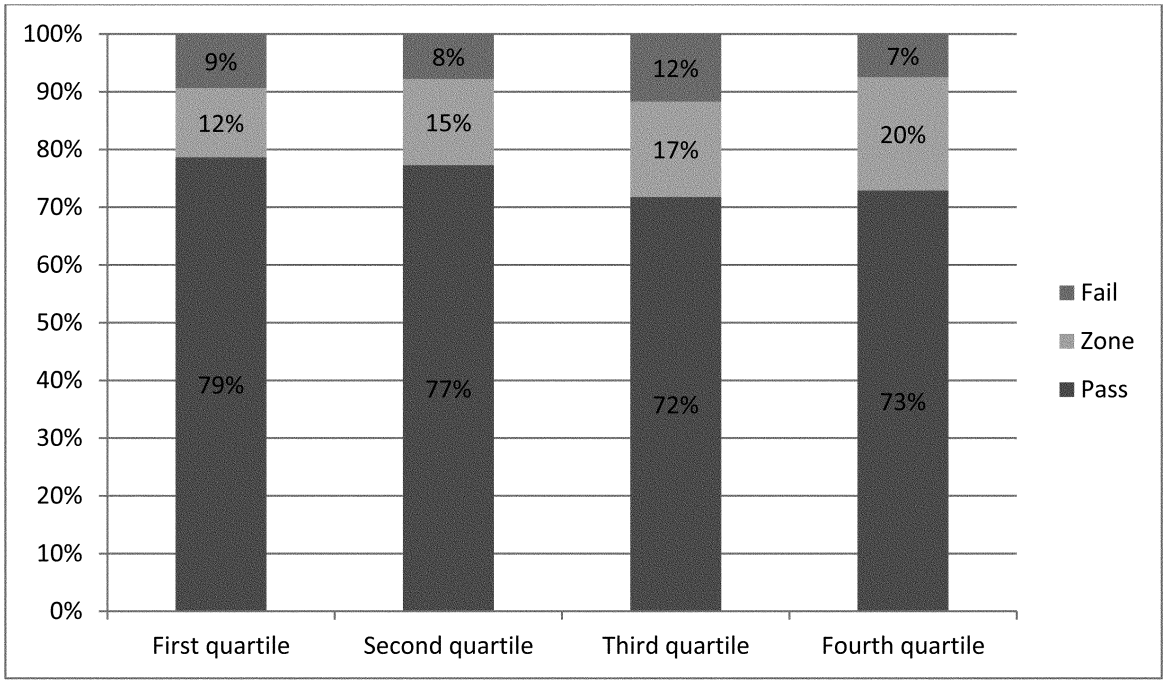
Table 2.6: Number of Passing, Zone, and Failing Programs Disaggregated by Quartiles* of Percent Black



*The first quartile represents the programs with the lowest proportion of Black students and the fourth quartile represents programs with the highest proportion.

Table 2.6 shows that the passing rates across all quartiles of percent Black are similar, except the first quartile has a slightly higher passing rate.

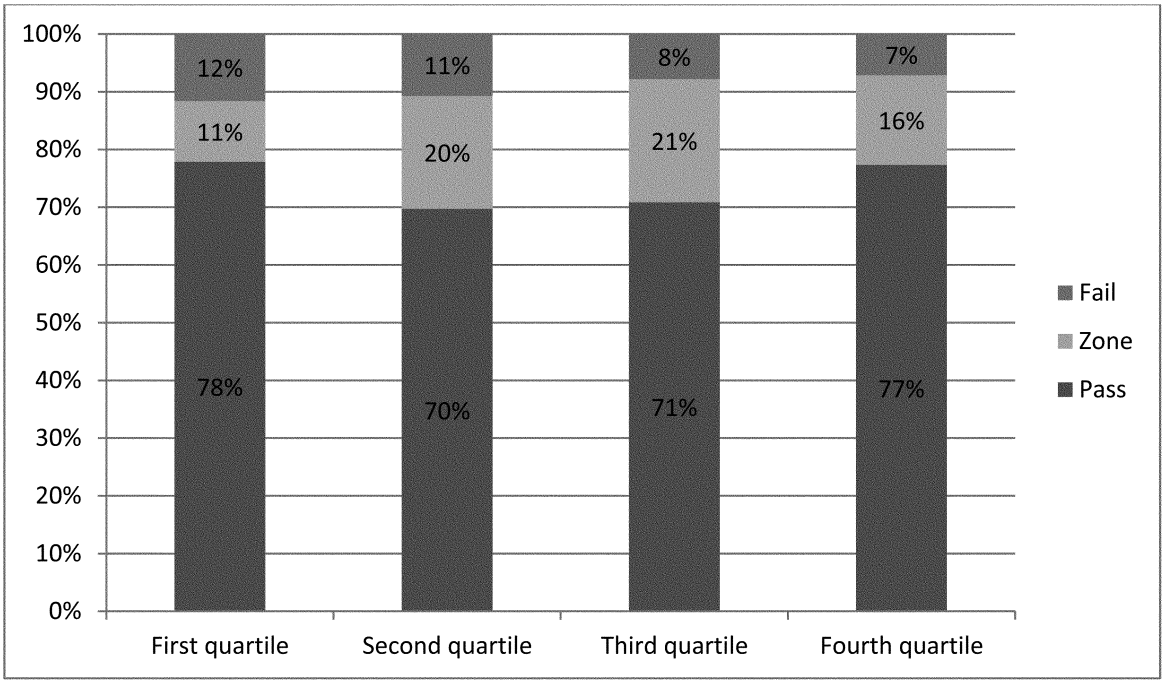
Table 2.7: Number of Passing, Zone, and Failing Programs Disaggregated by Quartiles* of Percent Hispanic



*The first quartile represents the programs with the lowest proportion of Hispanic students and the fourth quartile represents programs with the highest proportion.

Table 2.7 shows that the passing rates across all quartiles of percent Hispanic are similar.

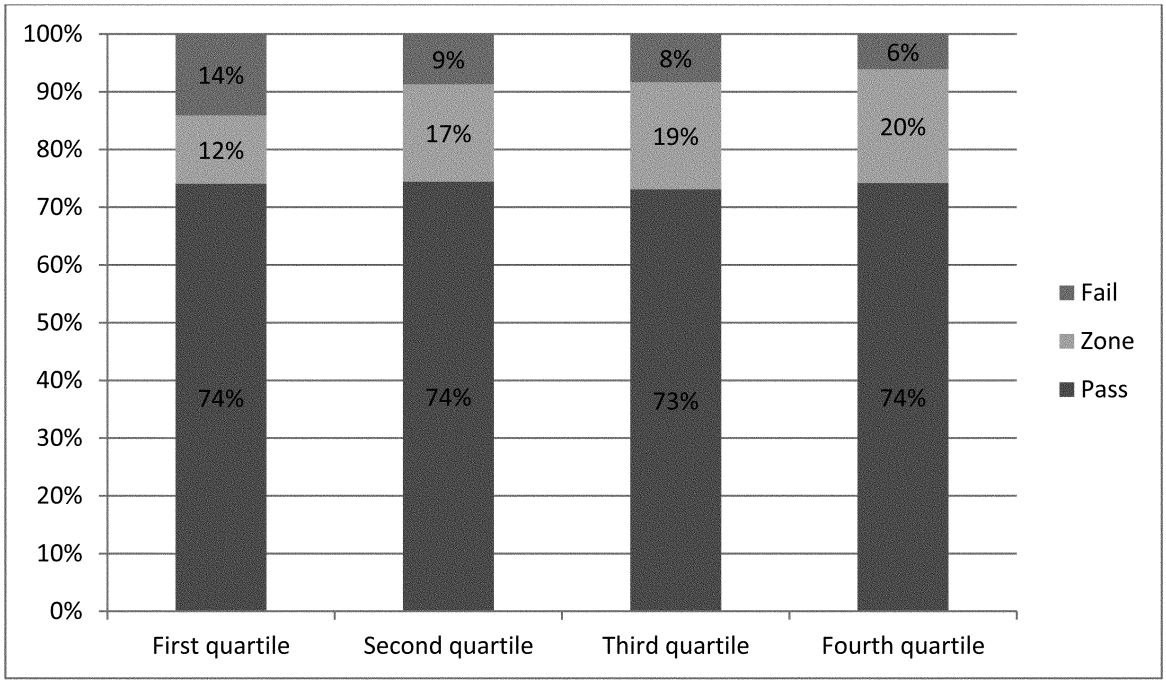
Table 2.8: Number of Passing, Zone, and Failing Programs Disaggregated by Quartiles* of Percent Pell



*The first quartile represents the programs with the lowest proportion of Pell students and the fourth quartile represents programs with the highest proportion.

Table 2.8 shows that the passing rates across all quartiles of percent Pell are similar.

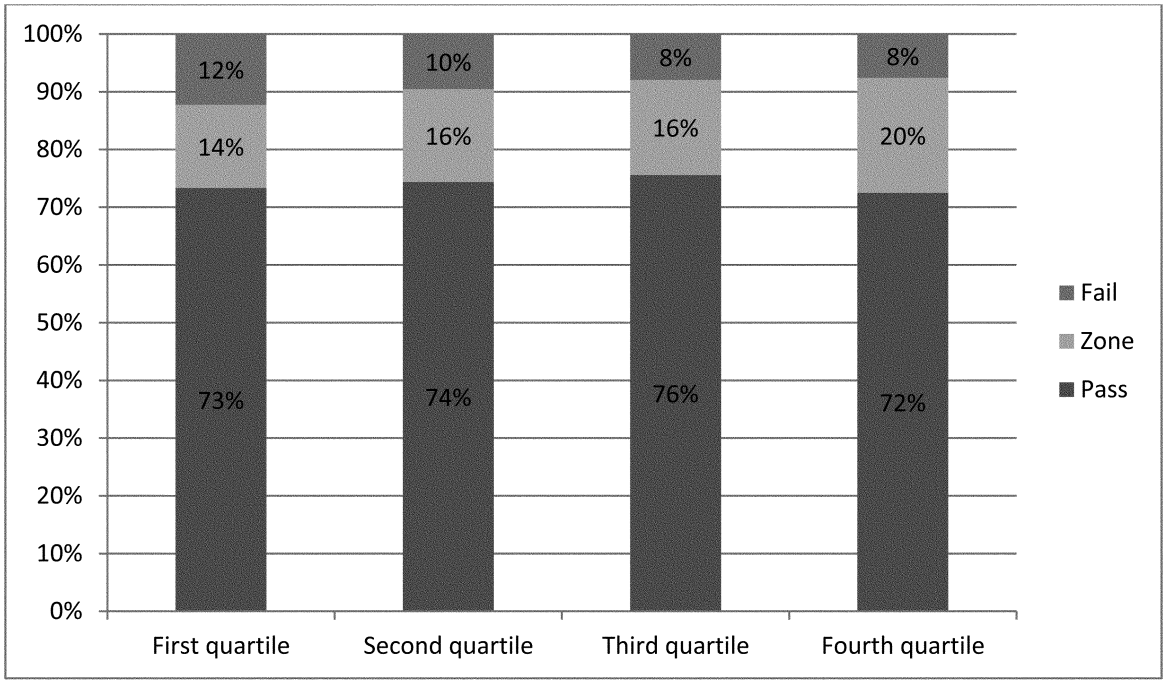
Table 2.9: Number of Passing, Zone, and Failing Programs Disaggregated by Quartiles* of Percent Zero EFC



*The first quartile represents the programs with the lowest proportion of zero EFC students and the fourth quartile represents programs with the highest proportion.

Table 2.9 shows that the passing rates across all quartiles of percent zero EFC are almost the same.

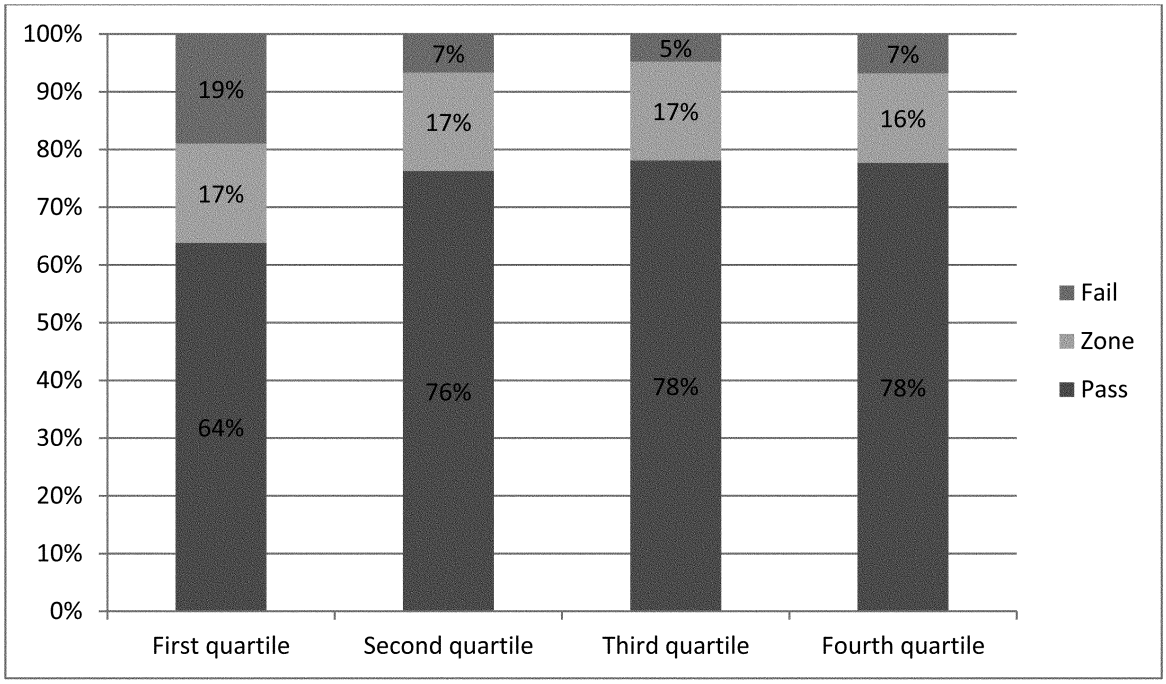
Table 2.10: Number of Passing, Zone, and Failing Programs Disaggregated by Quartiles* of Percent Female



*The first quartile represents the programs with the lowest proportion of female students and the fourth quartile represents programs with the highest proportion.

Table 2.10 shows that the passing rates across all quartiles of percent female are similar.

Table 2.11: Number of Passing, Zone, and Failing Programs Disaggregated by Quartiles of Percent Independent



*The first quartile represents the programs with the lowest proportion of independent students and the fourth quartile represents programs with the highest proportion.

Table 2.11 shows that the passing rates across all quartiles of percent independent are similar, except the first quartile has a slightly lower passing rate.

These results suggest that the regulations do not *primarily* measure student demographics because indicators of many student characteristics have similar passing rates across quartiles.

Student Demographics Regression Analysis of Final Regulations

As described in ''Methodology for student demographics analysis of final regulations,'' to further examine the relationship between student demographics and program results under the final regulations, we analyzed the degree to which individual demographic characteristics might be associated with a program's annual earnings rate while holding other characteristics constant. This method allowed us to investigate whether there are any particular demographic characteristics that may place programs at a substantial disadvantage under the D/E rates measure.

For this analysis, the Department created a regression model with annual earnings rate as the dependent variable and multiple independent variables that are indicators of student, program, and institutional characteristics. The independent variables in the regression analysis are zero EFC, independent, female, mothers completing college, and the following race and ethnicity categories: American Indian or Alaska Native (Indian), Asian/Native Hawaiian/Other Pacific Islander (Asian), Black or African American (Black), Hispanic or Latino/Hispanic (Hispanic), White/White non-Hispanic (White), and Two or More Races.[323] In addition, we included program credential level and institutional sector to control for non-demographic characteristics of programs. As stated previously, we ran the regression models both with and without the race and ethnicity variables.

[323] For purposes of this analysis, nonresident aliens and race unknown categories were excluded in the denominator in the calculation of percentages.

Table 2.12: Annual earnings rate regression- with race/ethnicity variables

Number of obs	4171
R-squared	0.44

Variable	Coefficient	Robust standard error	T-statistic	P-value
Asian	-0.022	0.005	-4.09	0.000
Black	0.019	0.003	6.07	0.000
Hispanic	-0.015	0.003	-4.62	0.000
Indian	-0.002	0.012	-0.13	0.896
race2or_more	-0.110	0.038	-2.92	0.004
zefc	-0.015	0.005	-3.00	0.003
independent	-0.017	0.004	-4.20	0.000
female	0.011	0.002	5.54	0.000
mother	0.031	0.008	4.07	0.000
Private	0.220	0.397	0.55	0.579
Public	1.231	0.646	1.90	0.057
Level_2	3.400	0.325	10.46	0.000
Level_3	4.775	0.412	11.60	0.000
Level_4	2.360	0.331	7.14	0.000
Level_5	-2.833	0.310	-9.14	0.000
Level_6	-2.192	0.397	-5.51	0.000
Level_7	-1.251	0.343	-3.64	0.000
Constant	2.168	0.251	8.65	0.000
Percent white used as reference group for race, for-profit used as reference group for sector, and credential level 01 (undergraduate certificate) used as reference group for credential levels				
Demographic and dependent variable units in percentages				

Table 2.13: Annual earnings rate regression- without race/ethnicity variables

Number of obs	5537
R-squared	0.3868

Variable	Coefficient	Robust standard error	T-statistic	P-value
zefc	-0.017	0.004	-4.48	0.000
independent	-0.005	0.004	-1.32	0.185
female	0.012	0.002	6.74	0.000
mother	0.044	0.007	6.09	0.000
Private	-2.855	0.210	-13.56	0.000
Public	-5.410	0.094	-57.72	0.000
Level_2	3.268	0.173	18.89	0.000
Level_3	2.978	0.318	9.37	0.000
Level_4	-2.131	0.322	-6.62	0.000
Level_5	-2.519	0.454	-5.55	0.000
Level_6	-2.947	0.743	-3.97	0.000
Level_7	4.614	3.210	1.44	0.151
Constant	5.357	0.376	14.25	0.000
For-profit used as reference group for sector and credential level 01 (undergraduate certificate) used as reference group for credential levels				
Demographic and dependent variable units in percentages				

The results of both regressions indicate that programs with greater proportions of zero EFC graduates have slightly lower annual earnings rates; programs with greater proportions of graduates mothers who completed college have slightly higher annual earnings rates; programs with greater proportions of Black graduates have slightly higher annual earnings rates; programs with greater proportions of Hispanic graduates have slightly lower annual earnings rates; programs with greater proportion of Asian graduates have slightly lower annual earnings rates; and programs with higher proportions of female graduates have slightly higher annual earnings rates. The percent American Indian variable does not have a statistically significant relationship with annual earnings rate. When controlling for race and ethnicity, programs with higher proportions of independent graduates have slightly lower annual earnings rates. Without controlling for race and ethnicity categories, the percent independent variable is not statistically significant. While many of the demographic variables are statistically significant, the magnitude of the coefficients is sufficiently small indicating that these factors have little impact on annual earnings rates and that it would be unlikely for a program to move from passing to failing solely by virtue of enrolling more students with these characteristics.

In response to the NPRM, commenters argued that the Department should further explore the results of the regression analysis where they contradict our own prior research on the relationship between student characteristics and education outcomes. For example, one commenter asserted that a recent study commissioned by the Department demonstrated that race, gender, and income were all significant in predicting student success in the form of degree attainment. We do not believe that the regression results described in this section contradict the Department's prior research because we have not conducted similar research on D/E rates as calculated in the regulations.

To better understand the results of the regression analysis, we provide a correlation matrix of the variables that were used.

Table 2.14: Correlation Matrix

	D/E	earnings	loan_amount	asian	black	hispanic	indian	race2or_more	white	zefc	independent	female	mother
D/E	1.000												
earnings	-0.217	1.000											
loan_amount	0.805	0.181	1.000										
asian	-0.014	0.069	0.058	1.000									
black	0.108	-0.079	0.030	-0.110	1.000								
hispanic	-0.073	-0.294	-0.155	-0.033	-0.210	1.000							
indian	-0.020	0.001	-0.019	-0.008	-0.070	-0.059	1.000						
race2or_more	0.018	-0.013	0.024	0.064	0.032	-0.011	0.006	1.000					
white	-0.004	0.285	0.096	-0.235	-0.455	-0.703	-0.012	-0.068	1.000				
zefc	-0.120	-0.593	-0.372	0.013	0.244	0.578	0.006	0.021	-0.672	1.000			
independent	-0.137	-0.015	-0.162	0.043	0.252	-0.030	0.055	0.041	-0.168	0.346	1.000		
female	0.010	-0.268	-0.124	-0.003	0.041	-0.038	0.008	-0.004	0.005	0.244	0.289	1.000	
mother	0.140	0.327	0.329	-0.005	-0.177	-0.303	0.009	-0.016	0.383	-0.593	-0.442	-0.186	1.000

*Dummy variables for sector and credential level not included, those variables were not highly correlated with demographic variables

The correlation matrix demonstrates that there is some collinearity between zero EFC and percent mothers completing college, percent white, and percent Hispanic. To determine if the collinearity between these variables impacts the results of our analysis,

we ran the regressions described above but without the race and ethnicity variables and without percent mothers completing college. These regressions show results similar to those in the original regressions, suggesting the results are robust to alternative specifications.[324]

The correlation matrix also shows the correlation between the demographic variables and annual earnings rate and its components, annual loan payment and annual earnings. To better understand the results of the correlation matrix, particularly those that appear counterintuitive, we further examined the relationship between low-income status, using the percent zero EFC variable, and annual earnings rate. The correlation matrix shows that percent zero EFC is negatively correlated with annual earnings rate and also with both of its components, annual loan payment and annual earnings. In other words, higher percent zero EFC is correlated with lower annual loan payment, lower annual earnings, and lower annual earnings rate. These correlations suggest that zero EFC students borrow less than other students and as a result, with respect to the relationship between percent zero EFC and annual earnings rate, the annual loan payment is more influential than annual earnings since lower annual earnings rate could only be the result of lower annual loan payments and not lower annual earnings.

To further examine this explanation, we used NPSAS:2012 data to determine the average cumulative amount borrowed by undergraduate students who are Pell Grant recipients and have zero EFC status. We limited the sample to students who received title IV, HEA program funds and completed a program because those are the students whose outcomes will be assessed under the D/E rates measure. We also limited our analysis to students who attended for-profit institutions and certificate students at private and public institutions to capture students in GE programs.

Table 2.15: Cumulative amount borrowed (NPSAS:12)- Pell & zero EFC

	Cumulative amount borrowed for undergrad (AVG)	Cumulative federal loan amount for undergrad (AVG)
Total	18,912.98	16,213.40
Expected Family Contribution in 2011-12		
Zero 2011-12 EFC	17,315.38	14,859.19
2011-12 EFC > 1	21,064.62	18,037.23
Cumulative Pell amount		
Never had Pell	21,570.68	17,672.99
Had Pell sometime in UG career	18,488.11	15,980.06

Table 2.15 confirms that zero EFC students and Pell Grant recipients in GE program tend to borrow less. These results could mean either that low-income students borrow less than other students enrolled in the same program, or low-income students tend to enroll in programs that lead to lower debt. Programs can lead to lower debt because they are either less expensive per credit or because they are shorter in time. To test these explanations, we conducted an ordinary least squares regression using student-level data for the programs in the 2012 GE informational D/E rates data set. Because we used the 2012 informational D/E rates data, the analysis was restricted to students who received title IV, HEA program funds who completed a GE program. To control for program cost, we used program-level fixed effects. The cumulative amount that a student borrowed to attend the program was used as the dependent variable and Pell status (received or not received) at any time in the student's academic career was used as the independent variable.

[324] Detailed results are not provided here.

Table 2.16: Cumulative amount borrowed regression- Pell status (2012 GE informational D/E rates)

Variable	Coefficient	Standard error	T-statistic	P-value
Intercept	0.00	25.16	0.00	1.00
Pell grant recipient	1016.06	62.86	16.16	<.0001

Note: Individual coefficients for each program not shown.

The results of this regression shows that when controlling for program effects, low-income students borrow more than other students. This finding suggests that the reason programs with a higher proportion of low-income students have better annual earnings rates is because low-income students tend to choose programs that typically lead to lower debt burdens.

Conclusions of Student Demographic Analysis of Final Regulations

The Department acknowledges that student characteristics can play a role in postsecondary outcomes. However, based on the regression and descriptive analyses described above, the Department cannot conclude that the D/E rates measure is unfair towards programs that graduate high percentages of students who are minorities, low-income, female, or nontraditional or that demographic characteristics are largely determinative of results. If this were the case, we would expect to observe consistent results across all types of analyses indicating positive associations between the annual earnings rate and the demographic variables and dramatic differences in the demographic profiles of passing, zone, and failing programs. Instead, we find a negative association between the proportion of low-income students and the annual earnings rate when controlling for other demographic and non-demographic factors, similar passing rates across all quartiles of low-income variables, and similar demographic profiles in passing, zone, and failing programs for almost all of the variables examined. These and other results of our analyses suggest that the regulation is not primarily measuring student demographics.

Impact Analysis of Final Regulations

This impact analysis is based on the sample of 2012 GE informational rates generated from NSLDS as described in the ''Data and Methodology for Analysis of the Regulations'' above. For purposes of this impact analysis, the sample of programs only includes those that meet the minimum n-size threshold of 30. Of the 37,589 [325] GE programs in the FY 2010 reporting with total enrollment of 3,985,329 students receiving title IV, HEA program funds, 5,539 programs, representing 2,521,283 students receiving title IV, HEA program funds, had a minimum n-size of 30 and were evaluated in the 2012 GE informational D/E rates.

[325] A small number of informational rate programs did not have FY 2010 enrollment data.

Table 2.17: 2012 GE Informational D/E Rates Program Count

2-Digit CIP Code	2-Digit CIP Name	Public	Private	For-Profit	Total
51	Health Professions and Related Sciences	648	121	1,677	2,446
12	Personal and Miscellaneous Services	77	9	868	954
52	Business Management and Administrative Services	54	20	381	455
47	Mechanics and Repairs	49	11	198	258
50	Visual and Performing Arts	2	5	237	244
11	Computer and Information Sciences	6	6	206	218
43	Protective Services	83	2	115	200
15	Engineering Related Technologies	8	8	115	131
13	Education	27	26	60	113
46	Construction Trades	39	10	59	108
22	Law and Legal Services	11	8	69	88
48	Precision Production Trades	23	5	28	56
10	Telecommunications Technologies	1	1	46	48
49	Transportation and Material Moving Workers	25	2	19	46
19	Home Economics	18	5	9	32
42	Psychology	1	1	24	26
9	Communications	0	0	21	21
24	Liberal Arts and Sciences, General Studies and Humanities	9	0	5	14
44	Public Administration and Services	1	1	10	12
31	Parks, Recreation, Leisure, and Fitness Studies	1	0	11	12
23	English Language and Literature/Letters	0	5	5	10
30	Multi-interdisciplinary Studies	2	0	6	8
1	Agricultural Business and Production	2	1	3	6
45	Social Sciences and History	1	1	4	6
14	Engineering	1	1	2	4
41	Science Technologies	2	0	2	4
34	Health-related Knowledge and Skills	0	0	4	4
39	Theological Studies and Religious Vocations	0	2	0	2
54	History	0	0	2	2
4	Architecture and Related Programs	0	1	1	2
21	Technology/Education Industrial Arts	0	0	2	2
32	Basic Skills	0	0	2	2
3	Conservation and Renewable Natural Resources	0	0	1	1
26	Biological and Biomedical Sciences	0	0	1	1
40	Physical Sciences	1	0	0	1
16	Foreign Languages and Literature	1	0	0	1
25	Library Studies	0	1	0	1
Total		1,093	253	4,193	5,539

Table 2.17 illustrates the type of programs, by sector, in the 2012 GE informational D/E rates. The most common types of programs offered were Health Professions and Related Sciences programs, Personal and Miscellaneous Services programs, and Business Management and Administrative Services programs. A substantial majority (over 75 percent) of these programs are offered by for-profit institutions. This table includes all programs in the sample at all credential levels.

Table 2.18: 2012 GE Informational D/E Rates Programs As a Percentage of All Programs in FY 2010 Reporting by Two-Digit CIP Code

2-Digit CIP Code	2-Digit CIP Name	Public	Private	For-Profit	Total
51	Health Professions and Related Sciences	12.9%	17.8%	43.5%	25.6%
52	Business Management and Administrative Services	1.5%	6.8%	22.8%	8.3%
12	Personal and Miscellaneous Services	7.3%	18.0%	34.3%	26.2%
47	Mechanics and Repairs	2.2%	20.4%	56.6%	9.7%
11	Computer and Information Sciences	0.4%	6.7%	22.8%	8.2%
15	Engineering Related Technologies	0.5%	16.7%	36.7%	6.4%
50	Visual and Performing Arts	0.3%	4.0%	36.0%	17.5%
13	Education	3.9%	6.2%	23.2%	8.3%
43	Protective Services	9.4%	5.6%	29.6%	15.3%
48	Precision Production Trades	2.2%	22.7%	51.9%	5.0%
46	Construction Trades	4.1%	41.7%	46.8%	9.8%
22	Law and Legal Services	3.5%	13.6%	18.5%	11.7%
19	Home Economics	2.6%	25.0%	20.5%	4.3%
1	Agricultural Business and Production	0.4%	20.0%	33.3%	1.2%
10	Telecommunications Technologies	0.3%	20.0%	35.1%	9.3%
44	Public Administration and Services	0.5%	3.6%	23.3%	4.7%
9	Communications	0.0%	0.0%	27.6%	8.3%
49	Transportation and Material Moving Workers	14.7%	28.6%	43.2%	20.8%
31	Parks, Recreation, Leisure, and Fitness Studies	0.9%	0.0%	14.5%	6.1%
24	Liberal Arts and Sciences, General Studies and Humanities	6.9%	0.0%	10.6%	7.5%
30	Multi-interdisciplinary Studies	1.8%	0.0%	22.2%	4.4%
45	Social Sciences and History	0.8%	3.8%	15.4%	3.4%
42	Psychology	2.6%	1.7%	32.9%	15.3%
14	Engineering	1.2%	6.7%	5.9%	3.0%
16	Foreign Languages and Literature	0.9%	0.0%	0.0%	0.8%
23	English Language and Literature/Letters	0.0%	29.4%	22.7%	8.6%
39	Theological Studies and Religious Vocations	0.0%	2.3%	0.0%	1.9%
26	Biological and Biomedical Sciences	0.0%	0.0%	7.7%	1.1%
3	Conservation and Renewable Natural Resources	0.0%	0.0%	8.3%	1.2%
41	Science Technologies	2.8%	0.0%	28.6%	5.1%
4	Architecture and Related Programs	0.0%	14.3%	14.3%	3.4%
5	Area, Cultural, Ethnic, and Gender Studies	0.0%	0.0%	0.0%	0.0%
25	Library Studies	0.0%	14.3%	0.0%	2.4%
40	Physical Sciences	4.3%	0.0%	0.0%	3.2%
54	History	0.0%	0.0%	13.3%	8.0%
27	Mathematics and Statistics	0.0%	0.0%	0.0%	0.0%
38	Philosophy and Religious Studies	0.0%	0.0%	0.0%	0.0%
32	Basic Skills	0.0%	0.0%	66.7%	13.3%
34	Health-related Knowledge and Skills	0.0%	0.0%	100.0%	30.8%
36	Leisure and Recreational Activities	0.0%	0.0%	0.0%	0.0%
60	Residency Programs	0.0%	0.0%	0.0%	0.0%
28	Reserve Officer Training Corps	0.0%	0.0%	0.0%	0.0%
21	Technology/Education Industrial Arts	0.0%	0.0%	100.0%	50.0%
29	Military Technologies	0.0%	0.0%	0.0%	0.0%
33	Citizenship Activities	0.0%	0.0%	0.0%	0.0%
53	High School/Secondary Diplomas and Certificates	0.0%	0.0%	0.0%	0.0%
37	Personal Awareness and Self-Improvement	0.0%	0.0%	0.0%	0.0%

Table 2.18 illustrates the percentage of programs in the 2012 GE informational D/E rates sample out of the universe of all GE programs [326] for each two-digit CIP code ordered by the frequency of programs in the universe of GE programs. The first row shows that 12.9 percent of public health professions and related science programs (out of all public health professionals and related sciences programs) are in the sample. Also in the sample are 17.8 percent of private health professional and related science programs (out of all private health professionals and related sciences programs); and 43.5 percent of the for-profit health professional and related sciences programs (out of all for-profit health professionals and related sciences programs). In addition, 25.6 percent of health professionals and related sciences programs in all sectors are in the sample (out of all health professionals and related sciences programs in all sectors).

[326] This program count includes either GE programs that reported FY 2010 title IV enrollment and/or reported 2012 informational D/E rates (n>10) and/or had Department-calculated 2012 informational pCDR rates.

Table 2.19: 2012 GE Informational D/E Rates FY 2010 Enrollment Count

2-Digit CIP Code	2-Digit CIP Name	Public	Private	For-profit	Total
51	Health Professions and Related Sciences	82,308	26,749	689,375	798,432
52	Business Management and Administrative Services	6,339	3,082	564,141	573,562
12	Personal and Miscellaneous Services	8,396	1,597	183,441	193,434
43	Protective Services	11,248	336	163,685	175,269
11	Computer and Information Sciences	1,291	628	140,709	142,628
13	Education	3,325	3,338	96,037	102,700
47	Mechanics and Repairs	3,747	2,154	84,164	90,065
50	Visual and Performing Arts	148	299	86,178	86,625
15	Engineering Related Technologies	656	876	74,762	76,294
30	Multi-interdisciplinary Studies	151	0	55,203	55,354
42	Psychology	275	56	46,252	46,583
44	Public Administration and Services	54	64	39,432	39,550
22	Law and Legal Services	1,682	799	26,354	28,835
46	Construction Trades	2,686	1,778	11,833	16,297
24	Liberal Arts and Sciences, General Studies and Humanities	8,342	0	7,594	15,936
10	Telecommunications Technologies	435	52	13,570	14,057
45	Social Sciences and History	0	101	10,331	10,432
19	Home Economics	7,111	699	1,684	9,494
49	Transportation and Material Moving Workers	1,312	271	7,459	9,042
48	Precision Production Trades	1,642	1,165	5,887	8,694
23	English Language and Literature/Letters	0	1,101	5,659	6,760
9	Communications	0	0	6,034	6,034
14	Engineering	45	164	4,738	4,947
31	Parks, Recreation, Leisure, and Fitness Studies	815	0	3,377	4,192
34	Health-related Knowledge and Skills	0	0	1,320	1,320
54	History	0	0	1,293	1,293
21	Technology/Education Industrial Arts	0	0	1,066	1,066
4	Architecture and Related Programs	0	37	532	569
41	Science Technologies	192	0	253	445
3	Conservation and Renewable Natural Resources	0	0	420	420
1	Agricultural Business and Production	101	94	202	397
39	Theological Studies and Religious Vocations	0	167	0	167
32	Basic Skills	0	0	131	131
25	Library Studies	0	89	0	89
26	Biological and Biomedical Sciences	0	0	71	71
16	Foreign Languages and Literature	71	0	0	71
40	Physical Sciences	28	0	0	28
Total		142,400	45,696	2,333,187	2,521,283

Table 2.19 illustrates the enrollment count by sector for the 2012 GE informational D/E rates program sample. The types of programs with the highest number of FY 2010 enrollees were Health Professions and Related Sciences programs, Business Management

and Ministry of Services programs, and Personal and Miscellaneous Services programs. Over ninety percent of enrollees attended programs offered by for-profit institutions and only two percent of enrollees attended programs offered by private nonprofit institutions.

Table 2.20: 2012 GE Informational D/E Rates Enrollment as a Percentage of All Enrollment in FY 2010 Reporting by Two-Digit CIP Code

2-Digit CIP Code	2-Digit CIP Name	Public	Private	For-Profit	Total
51	Health Professions and Related Sciences	29.4%	69.5%	76.3%	65.4%
52	Business Management and Administrative Services	4.8%	50.7%	82.6%	69.9%
12	Personal and Miscellaneous Services	18.8%	50.3%	76.5%	67.2%
43	Protective Services	19.4%	33.2%	76.7%	64.4%
11	Computer and Information Sciences	3.5%	37.2%	66.8%	57.3%
13	Education	16.6%	41.4%	71.3%	63.1%
47	Mechanics and Repairs	5.6%	55.5%	89.4%	54.5%
50	Visual and Performing Arts	1.0%	18.1%	76.3%	66.8%
15	Engineering Related Technologies	2.6%	58.6%	89.5%	68.9%
30	Multi-interdisciplinary Studies	7.7%	0.0%	94.6%	91.4%
42	Psychology	15.9%	5.2%	66.8%	64.7%
44	Public Administration and Services	0.9%	16.8%	76.1%	67.8%
22	Law and Legal Services	15.5%	48.6%	50.9%	44.8%
46	Construction Trades	12.3%	89.4%	74.7%	41.1%
24	Liberal Arts and Sciences, General Studies and Humanities	57.4%	0.0%	69.5%	61.5%
10	Telecommunications Technologies	4.5%	48.6%	62.3%	44.6%
45	Social Sciences and History	0.0%	21.6%	65.6%	60.1%
19	Home Economics	14.0%	68.3%	25.5%	16.3%
49	Transportation and Material Moving Workers	31.9%	36.3%	87.4%	67.5%
48	Precision Production Trades	5.6%	85.9%	78.1%	22.9%
23	English Language and Literature/Letters	0.0%	94.7%	77.3%	39.6%
9	Communications	0.0%	0.0%	51.9%	38.8%
14	Engineering	3.3%	55.4%	84.4%	68.0%
31	Parks, Recreation, Leisure, and Fitness Studies	24.9%	0.0%	36.4%	33.0%
34	Health-related Knowledge and Skills	0.0%	0.0%	100.0%	91.0%
54	History	0.0%	0.0%	30.2%	29.9%
21	Technology/Education Industrial Arts	0.0%	0.0%	100.0%	99.4%
4	Architecture and Related Programs	0.0%	41.1%	71.4%	15.5%
41	Science Technologies	12.0%	0.0%	42.8%	20.3%
3	Conservation and Renewable Natural Resources	0.0%	0.0%	17.9%	11.5%
1	Agricultural Business and Production	1.5%	81.0%	72.1%	5.7%
39	Theological Studies and Religious Vocations	0.0%	14.6%	0.0%	10.4%
32	Basic Skills	0.0%	0.0%	35.8%	23.7%
25	Library Studies	0.0%	50.3%	0.0%	10.1%
16	Foreign Languages and Literature	2.7%	0.0%	0.0%	2.6%

26	Biological and Biomedical Sciences	0.0%	0.0%	7.9%	4.2%
40	Physical Sciences	26.9%	0.0%	0.0%	17.8%
38	Philosophy and Religious Studies	0.0%	0.0%	0.0%	0.0%
36	Leisure and Recreational Activities	0.0%	0.0%	0.0%	0.0%
5	Area, Cultural, Ethnic, and Gender Studies	0.0%	0.0%	0.0%	0.0%
28	Reserve Officer Training Corps	0.0%	0.0%	0.0%	0.0%
27	Mathematics and Statistics	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%	0.0%
33	Citizenship Activities	0.0%	0.0%	0.0%	0.0%
37	Personal Awareness and Self-Improvement	0.0%	0.0%	0.0%	0.0%
53	High School/Secondary Diplomas and Certificates	0.0%	0.0%	0.0%	0.0%

Table 2.20 illustrates the percentage of FY 2010 enrollees in the 2012 GE informational D/E rates sample out of the universe of all FY 2010 GE reported enrollment for each two-digit CIP code ordered by the frequency of enrollees in the universe of GE programs. The first row shows that 29.4 percent of enrollees in public health professions and related science programs (out of all enrollees in public health professionals and related sciences programs) are in the sample. Also in the sample are 69.5 percent of enrollees in private health professional and related science programs (out of all enrollees in private health professionals and related sciences programs); 76.3 percent of enrollees in for-profit health professional and related sciences programs (out of enrollees in all for-profit health professionals and related sciences programs); and 65.4 percent of enrollees in health professionals and related sciences programs in all sectors (out of all enrollees in health professionals and related sciences programs in all sectors).

Table 2.21: 2012 GE Informational D/E 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
Overall Total			**5,539**	**4,094**	**928**	**517**	**2,521,283**	**1,679,616**	**453,904**	**387,763**
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	242	8	3	45,696	40,695	3,886	1,115
	< 2 year	Certificate	49	47	2	0	9,609	9,147	462	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	86	3	2	20,666	17,679	1,992	995
		Post-Bacc Certificate	39	38	0	1	5,097	4,977	0	120
For-Profit	Total		4,193	2,762	918	513	2,333,187	1,496,844	449,741	386,602
	< 2 year	Certificate	1,100	877	185	38	216,363	154,749	51,207	10,407
		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	903	264	56	365,500	255,040	97,385	13,075
		Associate's	452	215	160	77	105,750	41,914	34,921	28,915
		Post-Bacc Certificate	2	2	0	0	156	156	0	0
	4-year	Certificate	267	169	70	28	84,610	47,102	30,205	7,303
		Associate's	514	183	167	164	669,030	240,135	174,977	253,918
		Bachelor's	407	208	62	137	618,330	493,257	55,897	69,176
		Post-Bacc Certificate	8	8	0	0	1,950	1,950	0	0
		Master's	171	157	4	10	226,106	222,173	1,511	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	4,094	928	517	2,521,283	1,679,616	453,904	387,763

Table 2.21 illustrates the 2012 GE informational D/E rates program results. This analysis shows that:

- 4,094 programs (74 percent [327] of programs and comprising 67 percent (1,679,616) of the total enrollees) would pass the D/E rates measure.
- 928 programs (17 percent of programs with 453,904 enrollees (18 percent)) would fall into the zone.
- 517 of programs (9 percent of programs with 387,763 enrollees (15 percent)) would fail.

Almost all programs that would fail or fall in the zone were at for-profit institutions.

Table 2.22: Average Annual Loan Payment, Earnings, and Repayment Rate, Default Rate of 2012 GE Informational Rates Sample by Sector

	Annual Loan Payment	Annual Earnings	Repayment Rate	Default Rate
Public	351	32,488	55.6	11.7
Private	768	25,398	42.9	14.5
For-Profit	1,704	27,290	41.2	22.2

Table 2.22 provides the average program annual loan payment (weighted by the number of students completing a program), the average program earnings (weighted by the number of students completing a program), the average default rate (weighted by the number of applicable borrowers), and the average repayment rate (weighted by the number of applicable borrowers) for each sector.

Table 2.23: Average Annual Loan Payment, Earnings, and Repayment Rate, Default Rate of 2012 GE Informational Rates Sample by Status

	Annual Loan Payment	Annual Earnings	Repayment Rate	Default Rate
Pass	1,284	30,714	45.0	19.5
Zone	1,723	17,498	32.9	25.2
Fail	3,622	21,016	32.3	27.6

Table 2.23 provides the average program annual loan payment (weighted by the number of students completing a program), the average program earnings (weighted by the number of students completed a program), the average default rate (weighted by the number of applicable borrowers), and the average repayment rate (weighted by the number of applicable borrowers) for passing, zone, and failing programs.

[327] Percentages not provided in table.

Table 2.24: 2012 GE Informational D/E Rates Passing Programs Disaggregated by Annual Earnings Rate and Discretionary Income Rate

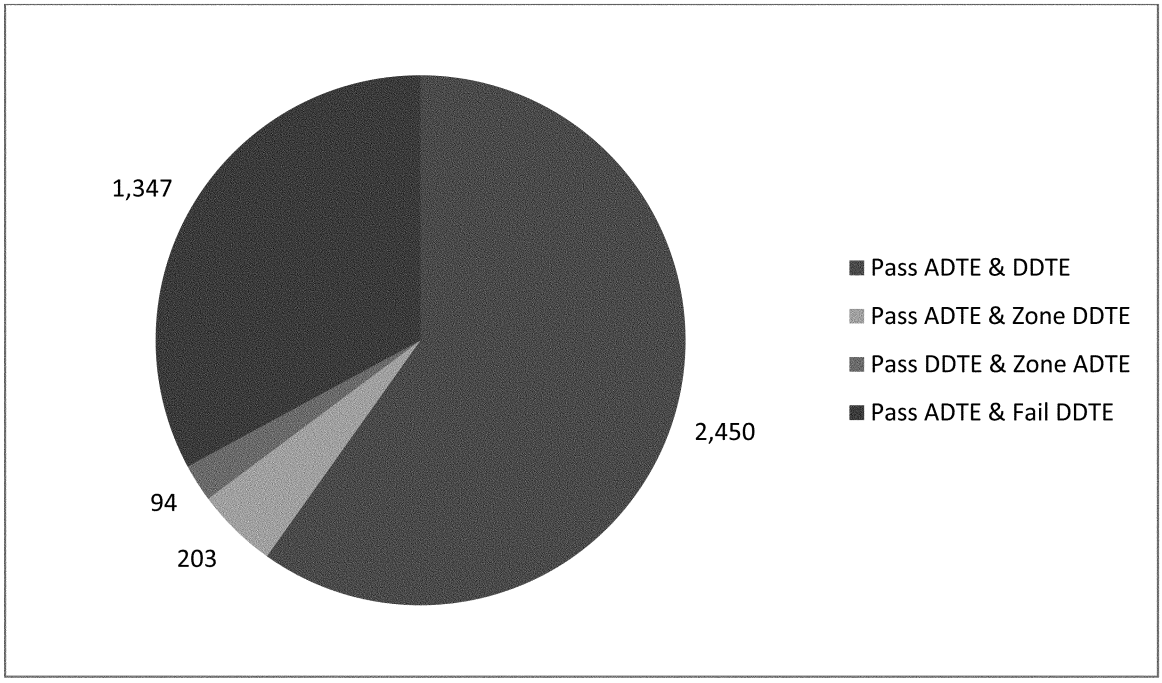


Table 2.24 shows that 60 percent of programs that passed overall passed both the annual earnings rate and the discretionary income rate. Thirty-three percent of programs that passed the D/E rates measure overall failed the discretionary income rate and passed the annual earnings rate whereas no programs that failed the annual earnings rate passed the discretionary income rate.

Table 2.25: 2012 GE Informational D/E Rates Zone Programs Disaggregated by Annual Earnings Rate and Discretionary Income Rate

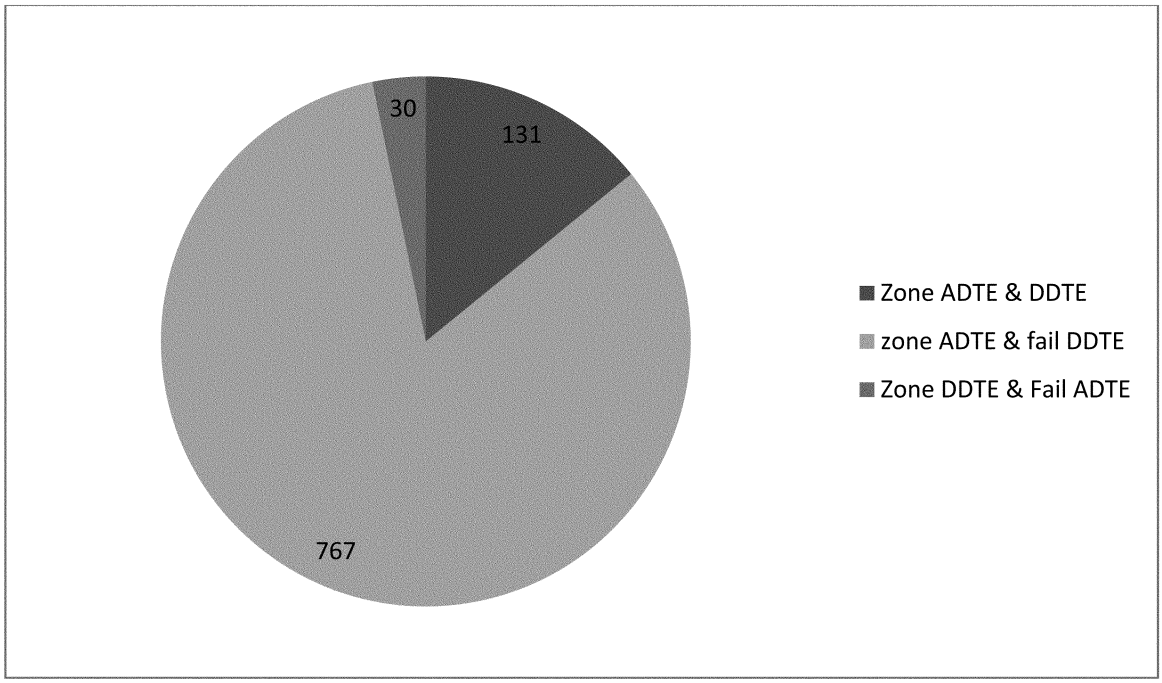


Table 2.25 shows that eighty-three percent of programs in the zone failed the discretionary income rate but were in the zone for the annual earnings rate. Only 3 percent of zone programs failed the annual earnings rate but were in the zone for the discretionary income rate.

Table 2.26: Most Frequent Types of Programs in the 2012 Informational D/E Rates

CIP	Credential level	Programs	% of all programs	t4 students	% of all t4 students
MEDICAL/CLINICAL ASSISTANT.	Certificate	347	6.3%	176,086	7.0%
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Bachelor's	41	0.7%	168,054	6.7%
COSMETOLOGY/COSMETOLOGIST, GENERAL.	Certificate	590	10.7%	115,579	4.6%
LICENSED PRACTICAL/VOCATIONAL NURSE TRAINING*	Certificate	491	8.9%	79,923	3.2%
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Master's	28	0.5%	77,571	3.1%
MEDICAL/CLINICAL ASSISTANT.	Associate's	96	1.7%	64,012	2.5%
OFFICE MANAGEMENT AND SUPERVISION.	Associate's	2	0.0%	58,489	2.3%
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Associate's	42	0.8%	51,756	2.1%
AUTOMOBILE/AUTOMOTIVE MECHANICS TECHNOLOGY/TECHNICIAN.	Certificate	47	0.8%	33,349	1.3%
MASSAGE THERAPY/THERAPEUTIC MASSAGE.	Certificate	222	4.0%	33,267	1.3%
MEDICAL OFFICE ASSISTANT/SPECIALIST.	Associate's	10	0.2%	32,951	1.3%
CRIMINAL JUSTICE/LAW ENFORCEMENT ADMINISTRATION.	Bachelor's	8	0.1%	32,284	1.3%
COMPUTER SYSTEMS NETWORKING AND TELECOMMUNICATIONS.	Associate's	16	0.3%	32,283	1.3%
HEALTH INFORMATION/MEDICAL RECORDS TECHNOLOGY/TECHNICIAN.	Associate's	6	0.1%	29,372	1.2%
CORRECTIONS AND CRIMINAL JUSTICE, OTHER.	Associate's	2	0.0%	27,743	1.1%
BEHAVIORAL SCIENCES.	Associate's	1	0.0%	27,090	1.1%
BUSINESS ADMINISTRATION, MANAGEMENT AND OPERATIONS, OTHER.	Bachelor's	5	0.1%	25,469	1.0%
CULINARY ARTS/CHEF TRAINING.	Associate's	33	0.6%	24,997	1.0%
PHARMACY TECHNICIAN/ASSISTANT.	Certificate	116	2.1%	24,945	1.0%
ALL OTHER	**ALL OTHER**	**3,436**	**62.0%**	**1,406,063**	**55.8%**

Table 2.26 illustrates the most frequent types of programs (by enrollment count) in the 2012 informational D/E rates sample. The most frequent types of programs are cosmetology certificate programs, nursing certificate programs, medical/clinical assistant certificate programs, and massage therapy certificates.

Table 2.27: Average Program Annual Loan Payment, Earnings, Default Rate, and Repayment Rate for Most Frequent Type of Programs (by Enrollment Count)

CIP	Credential level	Annual loan payment	Earnings	Repayment rate	Default rate
MEDICAL/CLINICAL ASSISTANT.	Certificate	$1,074	$15,309	25.1%	24.8%
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Bachelor's	$2,495	$50,012	45.0%	19.6%
COSMETOLOGY/COSMETOLOGIST, GENERAL.	Certificate	$856	$12,272	42.5%	17.2%
LICENSED PRACTICAL/VOCATIONAL NURSE TRAINING*	Certificate	$983	$33,852	44.1%	12.9%
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Master's	$2,182	$63,822	45.8%	7.0%
MEDICAL/CLINICAL ASSISTANT.	Associate's	$1,942	$19,223	23.5%	22.5%
OFFICE MANAGEMENT AND SUPERVISION.	Associate's	$2,041	$38,570	37.5%	33.9%
BUSINESS ADMINISTRATION AND MANAGEMENT, GENERAL.	Associate's	$1,811	$27,367	33.5%	27.9%
AUTOMOBILE/AUTOMOTIVE MECHANICS TECHNOLOGY/TECHNICIAN.	Certificate	$1,322	$23,603	52.0%	21.5%
MASSAGE THERAPY/THERAPEUTIC MASSAGE.	Certificate	$1,002	$16,118	41.2%	21.7%
MEDICAL OFFICE ASSISTANT/SPECIALIST.	Associate's	$2,086	$22,343	25.7%	34.6%
CRIMINAL JUSTICE/LAW ENFORCEMENT ADMINISTRATION.	Bachelor's	$3,105	$38,541	35.1%	24.8%
COMPUTER SYSTEMS NETWORKING AND TELECOMMUNICATIONS.	Associate's	$4,098	$28,872	33.8%	31.4%
HEALTH INFORMATION/MEDICAL RECORDS TECHNOLOGY/TECHNICIAN.	Associate's	$2,639	$24,392	31.0%	35.8%
CORRECTIONS AND CRIMINAL JUSTICE, OTHER.	Associate's	$2,211	$30,857	25.9%	43.9%
BEHAVIORAL SCIENCES.	Associate's	$2,485	$18,781	23.3%	38.0%
BUSINESS ADMINISTRATION, MANAGEMENT AND OPERATIONS, OTHER.	Bachelor's	$1,989	$49,629	46.1%	12.7%
CULINARY ARTS/CHEF TRAINING.	Associate's	$4,387	$22,378	38.6%	26.1%
PHARMACY TECHNICIAN/ASSISTANT.	Certificate	$983	$16,994	29.9%	21.4%
ALL OTHER	**ALL OTHER**	**$1,651**	**$29,219**	**42.9%**	**20.9%**

Table 2.27 provides the average program annual loan payment (weighted by the number of students completing a program), the average program earnings (weighted by the number of students completing a program), the average default rate (weighted by the number of applicable borrowers), and the average repayment rate (weighted by the number of applicable borrowers).

Table 2.28: Most Frequent Types of Zone or Failing Programs in the 2012 GE Informational D/E Rates Sample (by Enrollment Count)

CIP	Credential level	Zone/Fail Programs	% Zone/Fail programs in CIP-cred	Zone/Fail t4 students	% Zone/Fail t4 students in CIP-cred
MEDICAL/CLINICAL ASSISTANT.	Certificate	92	26.5%	59,955	34.0%
COSMETOLOGY/COSMETOLOGIST, GENERAL.	Certificate	182	30.8%	56,771	49.1%
MEDICAL/CLINICAL ASSISTANT.	Associate's	69	71.9%	56,262	87.9%
MEDICAL OFFICE ASSISTANT/SPECIALIST.	Associate's	5	50.0%	32,129	97.5%
HEALTH INFORMATION/MEDICAL RECORDS TECHNOLOGY/TECHNICIAN.	Associate's	5	83.3%	28,615	97.4%
BEHAVIORAL SCIENCES.	Associate's	1	100.0%	27,090	100.0%
COMPUTER SYSTEMS NETWORKING AND TELECOMMUNICATIONS.	Associate's	6	37.5%	26,248	81.3%
CULINARY ARTS/CHEF TRAINING.	Associate's	31	93.9%	24,446	97.8%
CRIMINAL JUSTICE/LAW ENFORCEMENT ADMINISTRATION.	Associate's	10	83.3%	24,033	98.0%
ELECTRICAL, ELECTRONIC AND COMMUNICATIONS ENGINEERING TECHNOLOGY/TECHNICIAN.	Associate's	4	44.4%	23,509	96.6%
BEHAVIORAL SCIENCES.	Bachelor's	1	50.0%	18,853	97.5%
TEACHER ASSISTANT/AIDE.	Associate's	1	100.0%	16,025	100.0%
HUMAN SERVICES, GENERAL.	Associate's	1	100.0%	15,064	100.0%
CRIMINAL JUSTICE/SAFETY STUDIES.	Associate's	18	69.2%	14,616	68.9%
CAD/CADD DRAFTING AND/OR DESIGN TECHNOLOGY/TECHNICIAN.	Associate's	5	100.0%	14,321	100.0%
SECURITIES SERVICES ADMINISTRATION/MANAGEMENT.	Associate's	13	100.0%	13,473	100.0%
MEDICAL INSURANCE CODING SPECIALIST/CODER.	Associate's	9	81.8%	13,290	97.7%
BUSINESS/COMMERCE, GENERAL.	Associate's	3	75.0%	12,550	75.2%
GRAPHIC DESIGN.	Bachelor's	19	82.6%	11,983	91.0%
ALL OTHER	ALL OTHER	970	22.4%	352,434	19.3%

Table 2.28 shows that the most frequent types of zone and failing programs in the 2012 GE informational D/E rates sample (by enrollment count) were medical/clinical assistant certificate programs, cosmetology certificate programs, and medical/clinical assistant associate degree programs.

Table 2.29: Most Frequent Types of Programs That Are Failing or in the Zone in 2012 Informational Rates (by Enrollment Count)

CIP	Credential Level	Annual loan payment			Earnings			Repayment rate			Default rate		
CIP_name		Pass	Zone	Fail	Pass	Zone	Fail	Pass	Zone	Fail	Pass	Zone	Fail
MEDICAL/CLINICAL ASSISTANT.	Certificate	975	1,247	1,697	16,189	13,467	12,900	28	20	20	23	28	24
COSMETOLOGY/COSMETOLOGIST, GENERAL.	Certificate	557	1,220	1,501	12,306	12,663	10,970	50	40	30	16	17	21
MEDICAL/CLINICAL ASSISTANT.	Associate's	1,193	1,925	2,603	20,805	19,689	16,961	32	25	18	19	20	28
MEDICAL OFFICE ASSISTANT/SPECIALIST.	Certificate	1,351	2,233	2,823	20,105	22,943	17,357	31	23	21	13	36	17
HEALTH INFORMATION/MEDICAL RECORDS TECHNOLOGY/TECHNICIAN.	Associate's	1,187	2,366	3,531	16,845	25,703	26,664	24	37	29	29	41	27
BEHAVIORAL SCIENCES.	Certificate			2,485			18,781			23			38
COMPUTER SYSTEMS NETWORKING AND TELECOMMUNICATIONS.	Associate's	2,531	2,876	4,435	34,103	28,680	27,969	37	40	33	26	22	33
CULINARY ARTS/CHEF TRAINING.	Associate's	1,716	2,338	4,655	25,156	22,980	22,275	20	41	39	11	22	27
CRIMINAL JUSTICE/LAW ENFORCEMENT ADMINISTRATION.	Associate's	1,293	2,031	3,581	23,735	21,227	19,939	21	21	16	31	27	35
ELECTRICAL, ELECTRONIC AND COMMUNICATIONS ENGINEERING TECHNOLOGY/TECHNICIAN.	Associate's	1,652	3,810	4,496	32,229	33,746	30,320	52	35	32	18	31	40
BEHAVIORAL SCIENCES.	Bachelor's	2,128	2,657		43,331	29,449		38	30		7	25	
TEACHER ASSISTANT/AIDE.	Certificate			2,310			14,637			26			40
HUMAN SERVICES, GENERAL.	Certificate		2,393			22,588			23			42	
CRIMINAL JUSTICE/SAFETY STUDIES.	Certificate	1,543	2,174	2,341	25,756	22,888	17,299	27	29	15	33	27	33
CAD/CADD DRAFTING AND/OR DESIGN TECHNOLOGY/TECHNICIAN.	Certificate		3,269	4,546		26,175	28,290		39	32		27	38
SECURITIES SERVICES ADMINISTRATION/MANAGEMENT.	Certificate		2,623	3,027		22,517	20,743		21	15		30	32
MEDICAL INSURANCE CODING SPECIALIST/CODER.	Bachelor's	1,114	2,035	3,086	21,325	23,722	19,191	16	28	15	12	19	25
BUSINESS/COMMERCE, GENERAL.	Certificate	2,154	2,478		41,023	25,676		27	28		20	28	
GRAPHIC DESIGN.	Certificate	2,659	3,033	3,898	34,788	27,684	26,297	56	45	42	8	19	21
ALL OTHER		1,373	1,911	3,742	34,034	19,083	20,926	46	36	34	19	24	24

Table 2.29 provides the average program annual loan payment (weighted by the number of students completing a program), the average program earnings (weighted by the number of students completing a program), the average default rate (weighted

by the number of applicable borrowers), and the average repayment rate (weighted by the number of applicable borrowers) for the most frequent types of programs that were failing or in the zone (by enrollment count).

Table 2.30: Program Results by Institution[328] in the 2012 GE Informational Rates Sample

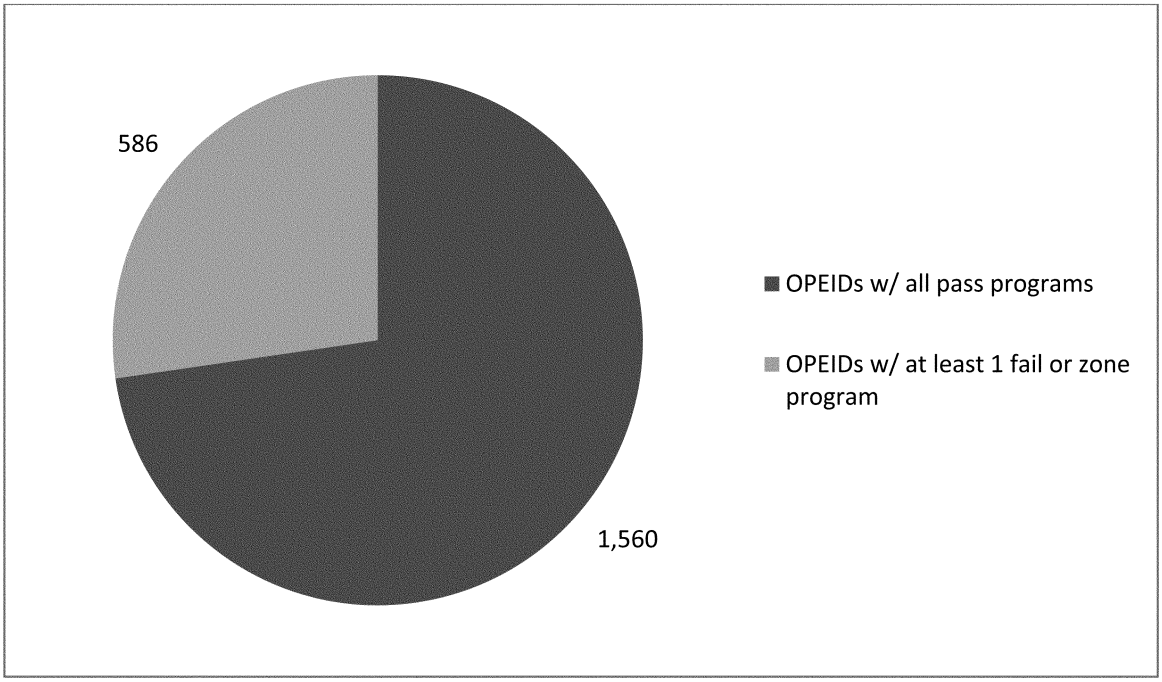


Table 2.30 illustrates that a large majority of institutions in the 2012 GE informational D/E rates sample have all passing programs.

[328] Defined as a unique six-digit OPEID.

Table 2.31: Concentration of Zone and Failing Programs by Institution[329] in 2012 GE Informational D/E Rates Sample

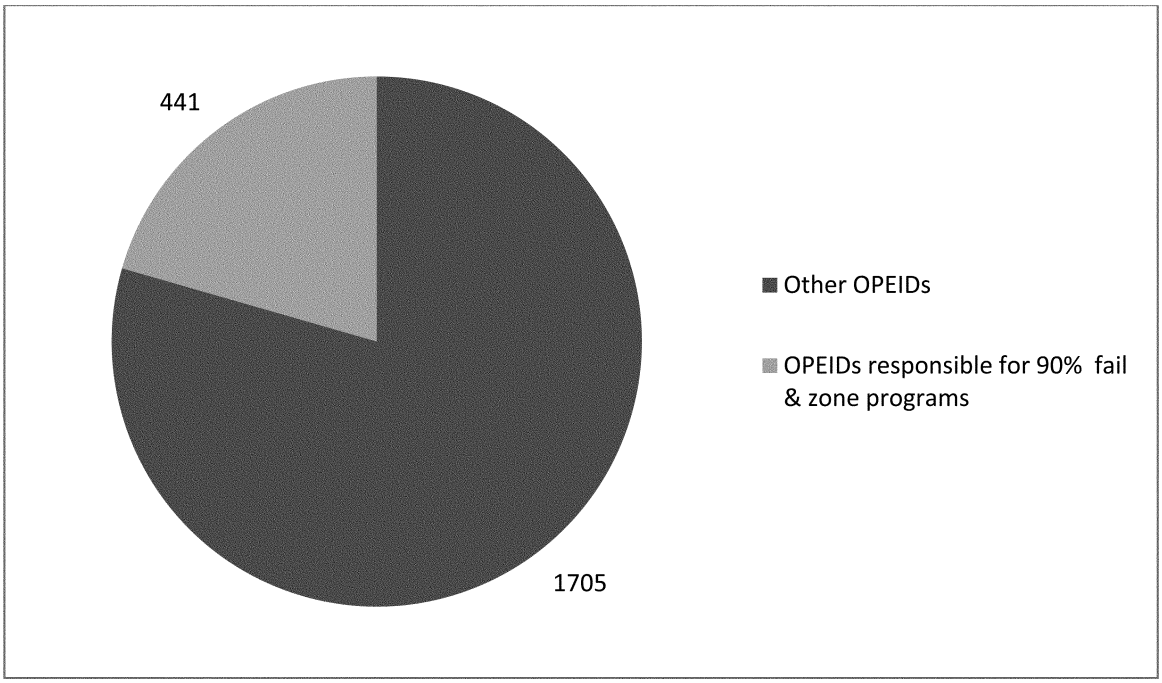
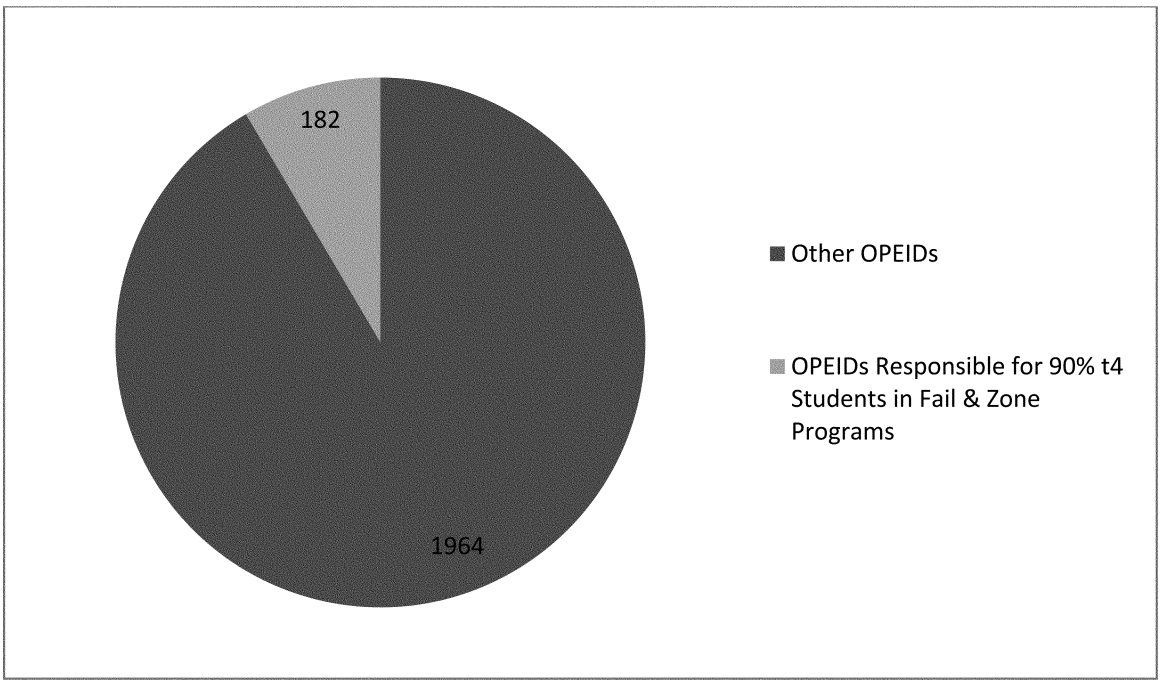


Table 2.31 illustrates that most of the zone and failing programs in the 2012 GE informational D/E rates sample are concentrated in a small number of institutions.

Table 2.32: Concentration of Enrollment in Zone and Failing Programs by Institution[330] in 2012 GE Informational D/E Rates Sample



[329] Defined as a unique six-digit OPEID.

Table 2.32 illustrates that most of the enrollment in zone and failing programs in the 2012 GE informational D/E rates sample are concentrated in a small number of institutions.

In response to the NPRM, analysis submitted by a commenter used data from the 2012 IPEDS files to construct a data set of 13,426 certificate programs, 9,993 associate degree programs, and 5,402 bachelor's degree programs at for-profit institutions and identified physical locations with alternatives within the same credential level and similar CIP codes.[331] Programs were defined by six-digit CIP code and program length and the IPEDS unit identifier to represent a campus location. Programs that were online only were excluded from the analysis. Substitute programs were defined in a variety of ways: (1) Programs at the same for-profit institution within the same credential level and a similar CIP code (four-digit and two-digit CIP codes analyzed); (2) programs at for-profit institutions within the same credential level, similar CIP code, and same five-digit zip code or three-digit zip code prefix; and (3) nearby programs in a similar CIP code at public or private not-for-profit institutions. This analysis found that 26.26 percent of students enrolled in for-profit institutions have an alternative within the same 6-digit CIP code and 5-digit zip code and, under the most expansive parameters of the analysis, that 95.78 percent of students attending for-profit institutions have at least one alternative within the same 2-digit CIP code and three-digit zip code prefix. The report provided that these results did not account for factors that might inhibit students from pursuing alternative programs including unwillingness to make even minor changes in locations or areas of study, a lack of qualifications or prerequisites to enter an alternative program, a lack of capacity in potential alternative programs, a lack of new programs to absorb students, and the possibility that accepting students with high debt amounts and high default potential would cause the receiving programs to fail the accountability metrics of the regulations. The report concluded that the Department's estimates of students affected by the regulations who would be able to find alternative programs is overstated and, as a result, the Department underestimated the number of students who will lose access to postsecondary education as a result of the regulations.

We believe that the commenter's analysis does not provide a useful assessment of transfer options because it evaluates transfer options for students in all programs rather than for those in zone and failing programs who will be most likely to seek alternatives as a result of their program's performance under the regulations. Further, the commenter's analysis did not consider as transfer options programs offered via distance education, which includes many online programs.

The Department conducted its own analysis to estimate the short-term transfer options that may be available to students in zone and failing programs (the Department assumes that in the long term, education markets will adjust and transfer options will change as student and employer demand will increase supply). Since 2012 GE informational D/E rates data are aggregated to each unique combination of the six-digit OPEID, six-digit CIP code, and credential level we do not have precise data on geographic location. For example, a GE program can have multiple branch locations in different cities and States. At some of these locations, the program could be offered as an online program. And at other locations, the program could be offered as an in-person program. But each of these locations would present as a single program in our data set without detail regarding precise location or format. To address this, the Department matched the 2012 GE informational D/E rates data with IPEDS data, which has more precise information regarding program location. As noted above, NSLDS and IPEDS have different reporting mechanisms and as a result, matching data from the two systems provides at best an approximation of the location of programs.

In order to identify geographical regions where potential transfer options may exist, we used the Core Based Statistical Area (CBSA) (or five-digit ZIP code instead if the CBSA is not applicable). For each combination of CBSA, CIP code, and credential level, we determined the number of programs available and the number of programs that would pass, fail, or fall in the zone under the D/E rates measure. For the programs not offered by distance education identified in IPEDS corresponding to the programs in the 2012 GE informational D/E rates that would not pass the D/E rates measure, we determined whether there were other programs in the same CBSA that had the same CIP and credential level and that would pass the D/E rates measure, would not be evaluated under the D/E rates measure (do not meet the n-size requirement), or is a non-GE program with an open admissions policies. We separately considered the availability of distance education programs as transfer options for students in in-person failing and zone programs in addition to in-person options. Finally, we also analyzed whether students in distance education programs that would fail or fall in the zone under the D/E rates measure would have available other distance education programs as transfer options.

Table 2.33: Transfer options for students in zone and failing programs

CIP code	Percent of enrollees in zone and failing programs not offered via distance education without transfer options (options include distance education options)	Percent of enrollees in zone and failing programs not offered via distance education without transfer options (options exclude distance education options)	Percent of enrollees in zone and failing programs offered via distance education without transfer options (options include ONLY distance education options)
Transfer options to the same 6-digit CIP	6.2%	32.3%	5.9%
Transfer options to the same 4-digit CIP	1.0%	9.8%	1.4%
Transfer options to the same 2-digit CIP	0.0%	2.1%	0.0%

[330] Defined as a unique six-digit OPEID.

[331] Jonathan Guryan and Matthew Thompson, Charles River Associates, Report on the Proposed Gainful Employment Regulation, 76–85.

Our analysis indicates that, under a static scenario assuming no reaction to the regulations, about 32 percent of students in in-person zone and failing programs will not have nearby transfer options to an in-person program with the same six-digit CIP code and credential level. This decreases to about 10 percent when in-person programs in the same four-digit CIP code are included. When online options in the same six-digit CIP code and credential level are considered, the percentage decreases from 32 percent to about 6 percent.

We recognize that there are some communities, particularly in rural areas, in which alternative programs in the same field may not be available. We also agree that students served by GE programs may have ties to a particular location that could limit their ability to pursue opportunities at physical campuses far from their home. However, we continue to believe that the substantial majority of students will find alternatives. The increased availability of online or distance programs, the chance that students will change their field or level of study in light of the data available under the regulations, and the possibility of new entrants and expanded capacity remained options for absorbing students affected by the regulations.

3. Costs, Benefits, and Transfers

Assumptions and Methodology

The Budget Model

To calculate the net budget impacts estimate, as in the NPRM, the Department developed a model based on assumptions regarding enrollment, program performance, student response to program performance, and average amount of title IV, HEA program funds per student to estimate the budget impact of these regulations. As discussed in more detail below, as a result of comments and, additionally, internal reconsideration, we revised the model used to create the budget estimate for the NPRM. The revised model: (1) Takes into account a program's past results under the D/E rates measure to predict future results, and (2) tracks a program's cumulative results across multiple cycles of results under the D/E rates measure.

Budget Model Assumptions

We made assumptions in three areas in order to estimate the budget impact of the final regulations:

1. Program performance under the regulations;

2. Student behavior in response to program performance; and,

3. Enrollment of students in GE programs.

Program Transition Assumptions

Some commenters were critical of the model used by the Department to estimate the budget impact for the NPRM because it made no assumption regarding the probability that a program would transition from passing or in the zone to a second failure or ineligibility. As stated previously and described in detail below, the Department's revised budget model accounts for this by tracking a program's results across multiple cycles. With this capability, the revised model uses cumulative past results to predict future results.

Some commenters criticized the NPRM's budget model on the basis that the assumptions for the probability that a program is failing did not distinguish whether the program fails due to its D/E rates or because of its pCDR. We do not address this comment here as the revised budget model for the final regulations makes no assumptions regarding pCDR results because the measure is not included as an accountability metric in the final regulations.

As in the NPRM, given a program's status under the D/E rates measure in any year—passing, in the zone, failing, ineligible, or not evaluated because the program did not meet the minimum n-size requirements—we developed assumptions for the likelihood that the program's performance would place it in each of the same five categories in the subsequent year:

1. Passing;

2. In the zone;

3. Failing;

4. Ineligible (a program could become ineligible in one of two ways: (1) By failing the D/E rates measure for two out of three consecutive years, or (2) by not achieving a passing status in four consecutive years); or,

5. Not evaluated because the program failed to meet the minimum n-size requirements for the D/E rates measure.

The budget model applies assumptions for three transitions between program results (year 0 to 1 to 2 to 3). It assumes that after year 3, which marks the beginning of the fourth transition in results, the rates of program transition will reach a steady state.

The program assumptions track results through each cycle of the model. Stated differently, results do not reset after each cycle. Rather, past results impact future results. For example, a program that falls in the zone in year 0 and passes in year 1 would not simply be considered a passing program. Its zone result in year 0 would continue to influence the probabilities of its year 2 results. If a program's performance reaches ineligible status (2 fails in 3 years or no passes in 4 years), the program becomes, and remains, ineligible for all future years. The model assigns probabilities for all potential combinations of results for each transition.

Year 0 to Year 1 Program Transition Assumptions

The assumptions for the year 0 to year 1 transition in program results (ex: The probability that a program is in the zone in year 0 and passing in year 1) is the observed comparison of actual D/E informational rates results for two consecutive cohorts of students in the GE Data. As in the NPRM, the initial assignment of performance categories in year 0 is based on the 2012 GE informational D/E rates data for students who completed GE programs in fiscal years 2008 and 2009. The program transition assumption for year 0 to year 1 are based on the outcomes of students who completed GE programs in fiscal years 2007 and 2008, and the outcomes of students who completed GE programs in fiscal years 2008 and 2009. For the observed results that are the basis for the year 0 to year 1 program transition assumption, we applied a minimum n-size of 10, instead of 30 as is required under the final regulations and used in the ''Analysis of the Regulations'' section of this RIA, for the D/E rates calculations to maximize the number of observations in the two-year comparative analysis used to create the program transition assumptions. Program results under the D/E rates measure for the 2007/2008 cohort of students who completed the program were calculated using the same methodology used to calculate the 2012 GE informational D/E rates except that, as with the 2008/2009 cohort, a minimum n-size of 10 was applied. It is important to note that the results in the ''Analysis of the Regulations'' section in this RIA are based on a minimum n-size of 30 for the D/E rates measure as is required under the regulations but the budget model for the ''Discussion of Costs, Benefits and Transfers'' and the ''Net Budget Impact'' sections used a minimum n-size of 15 for the D/E rates measure. This was done to simulate the effect of the four-year cohort period ''look back'' provisions of the regulations so that the net budget impact would not be underestimated as a result of treating programs that will likely be evaluated under the regulations as not having a result in the budget model. Only the results of programs with students who completed the programs in FY 2008 were compared because these programs would have results for both cohorts.

The observed year 0 to year 1 results also serve as the baseline for each subsequent transition of results (year 1 to year 2, etc.). As described below, the model applies additional assumptions from that baseline for each transition beginning with year 1 to year 2.

Table 3.1: Year 0 to Year 1 (Observed) Program Transition Assumptions

Year 1 Result	Year 2 Result	% w/ Year 2 Result
Pass	Pass	81.7%
	Zone	4.0%
	Fail	0.6%
	Not Evaluated	13.7%
Zone	Pass	22.0%
	Zone	39.8%
	Fail	24.9%
	Not Evaluated	13.4%
Fail	Pass	3.9%
	Zone	20.3%
	Fail	64.7%
	Not Evaluated	11.2%
Not Evaluated	Pass	6.3%
	Zone	0.8%
	Fail	0.6%
	Not Evaluated	92.3%

Because the year 0 and year 1 assumptions are the actual observed results of programs based on a cohort of students that completed programs prior to the Department's GE rulemaking efforts, the year 0 and year 1 assumptions do not account for changes that institutions have made to their programs in response to the Department's regulatory actions or will make after the final regulations are published.

Year 1 to Year 2 Program Transition Assumptions

After the year 0 to year 1 transition, the model assumes that institutions will take at least some steps to improve program performance during the transition period by, beginning with the year 1 to year 2 transition, increasing the baseline observed probability for all combinations with a passing result in year 2 by five percentage points. Because the total probabilities for each subsequent year result for any single prior year result cannot exceed 100 percent, the 5 percentage point year 2 ''improvement increase'' in the probability of passing is offset by a three percentage point zone probability decrease and two percentage point fail probability decrease.

We also assumed that programs with recent passing results would have a greater chance of future passing results, and programs with recent failing results would likewise be more likely to fail in the future. A zone result in year 0 or 1 was considered to have a neutral effect on future results. For each passing result a program had in years 0 and 1, we increased the proportion of passing programs in year 2 for all combinations of year 0–year 1 results by five percentage points. Each 5 percentage point year 2 ''momentum increase'' in the probability of passing is offset by a three percentage point zone probability decrease and two percentage point fail probability decrease. Similarly, for each failing result a program had in years 0 and 1, we decreased the proportion of passing programs in year 2 for all combinations of year 0–year 1 results by five percentage points. Each 5 percentage point year 2 ''momentum decrease'' in the probability of passing is offset by a two percentage point zone probability increase and three percentage point fail probability increase.

To demonstrate the effect of the year 1 to year 2 transition assumptions, we provide as an example the probability of each of a program's possible results in year 2 if it was in the zone in year 0 and passing in year 1. For the year 1 to year 2 pass-pass transition probability, a 5 percent improvement increase and a 5 percent momentum increase due to the year 1 pass result are added to the baseline observed 81.5 percent pass-pass probability, resulting in an assumed probability of 91.5 percent that a program is passing in year 2 after it was in the zone in year 0 and passing in year 1. In most cases, the 10 percentage point year 2 pass probability increase would be offset in the model by a 6 percentage point year 2 zone probability decrease (3 percentage points for each 5 percentage point increase) and a 4 percentage point year 2 fail probability decrease (2 percentage points for each 5 percentage point increase) from the baseline observed pass-zone and pass-fail probabilities respectively. In this case, the baseline observed probabilities are decreased from 4 percent to 0 percent for pass-zone and 1 percent to 0 percent for pass-fail. Because the baseline observed pass-ineligible probability is already 0 percent, the remaining 5 percent offset amount is taken from the baseline observed pass-not evaluated probability, reducing it from 13.5 percent to 8.5 percent. To summarize, for a program that is in the zone in year 0 and passing in year 1, the probabilities of the program's year 2 results are as follows: Pass, 91.5 percent (81.5 + 5 + 5); zone, 0 percent (4 − 4); fail 0 percent (1 − 1); not evaluated, 8.5 percent (13.5 − 5); ineligible, 0 percent.

Table 3.2: Year 1 to Year 2 Program Transition Assumptions

Prior Years Results	Pass	Zone	Fail	NE	Ineligible
YR0 Pass					
Yr1 Pass	96.5	0	0	3.5	0
Y1 Zone	32	34	21	13	0
YR1 Fail	9	17	0	11	63
YR1 Not Evaluated	16	0	0	84	0
YR1 Ineligible	0	0	0	0	100
YR0 Zone					
Yr1 Pass	91.5	0	0	8.5	0
Y1 Zone	27	37	23	13	0
YR1 Fail	4	20	0	11	65
YR1 Not Evaluated	11	0	0	89	0
YR1 Ineligible	0	0	0	0	100
YR0 Fail					
Yr1 Pass	86.5	1	0	12.5	0
Y1 Zone	22	40	3	13	22
YR1 Fail	0	0	0	0	100
YR1 Not Evaluated	6	1	0	92	1
YR1 Ineligible	0	0	0	0	100
YR0 Not Evaluated					
Yr1 Pass	91.5	0	0	8.5	0
Y1 Zone	27	37	23	13	0
YR1 Fail	4	20	0	11	65
YR1 Not Evaluated	11	0	0	89	0
YR1 Ineligible	0	0	0	0	100

Program Transition Assumptions for Year 3 and After

Beginning with year 3, the budget model assumes a program falls into one of six categories based upon the program's past performance and then, for each of these categories, assumes a probability for each possible result the program could have in the subsequent year (pass, zone, fail, not evaluated, or ineligible). The six performance categories are as follows:

- *High Performing:* Programs that have zero probability of failure in the following year. These programs have no recent zone or failing results.
- *Improving:* Programs with a most recent result that is better than the prior year's result.
- *Declining:* Programs with multiple zone results in previous years or programs with a most recent result that is worse than the prior year's result.
- *Facing Ineligibility:* Programs that could become ineligible the following year. Any program with a failing result in the most recent year is in this category, along with any program that has only zone or failing results in the previous three years.
- *Ineligible:* Programs that have already become ineligible.
- *Not Evaluated:* Programs with an n-size under 15.

As with the year 0 to year 2 assumptions, for each performance category, the probability of a program's result in the following year is based on the baseline observed results provided in Table 3.1. Also like the year 0 to year 2 assumptions, the model assumes ongoing improvement by increasing the baseline observed probability for all combinations with a passing result in the following year by five percentage points.

The probability that a high performing program will pass the following year is the baseline observed probability of pass-pass increased by 10 percentage points and additionally by the 5 percentage point improvement increase. The probability that an improving program will pass the following year is the baseline observed probability of zone-pass increased by 10 percentage points and additionally by the 5 percentage point improvement increase. The probability that a declining program will pass the following year is the baseline observed probability of zone-pass decreased by 10 percentage points and offset by the 5 percentage point improvement increase. The probability that a program facing ineligibility will pass the following year is the baseline

observed probability of fail-pass decreased by 10 percentage points and offset by the 5 percentage point improvement increase. The probability that an ineligible program will pass in the following year is of course zero. The probability that a not evaluated program will pass the following year was only adjusted for the 5 percentage point improvement increase. Where a program's subsequent year's pass probability was increased or decreased, the model offsets the adjustment by increasing or decreasing the corresponding zone and fail probabilities from the baseline observed probabilities in the same amounts applied to the year 1 to year 2 transition probabilities.

To demonstrate the effect of the year 3 and after transition assumptions, we provide as an example the probability of each of a high performing program's possible results for the following year. For the probability that a high performing program will pass the following year, a 5 percent improvement increase and a 10 percent momentum increase are added to the baseline observed 81.5 percent pass-pass probability, resulting in an assumed probability of 96.5 percent. The probability that this program would fall in the zone, fail, not be evaluated, or become ineligible the following year is determined by apportioning the 15 percentage point pass offset to the baseline observed probabilities that the program would fall in the zone, fail, or not be evaluated after passing the previous year. The zone probability is reduced from 4 percent to 0 percent, the fail probability from 1 percent to 0 percent, and the not evaluated probability from 13.5 percent to 3.5 percent.

Table 3.3: Post Year 3 Program Transition Assumptions

	Pass	zone	Fail	Ne	Ineligible
Prior Year Group:					
Good	96.5	0	0	3.5	0
Improving	37	31	19	13	0
Poor/Declining	17	42	28	13	0
Fail Next	0	21	0	11	68
Ineligible	0	0	0	0	100
NE	11	0	0	89	0

Student Response Assumptions

In the NPRM, the Department provided two primary budget impact estimates, one based on a ''low'' student response to program performance and the other based on a ''high'' student response to program performance. For clarity, we provide for the final regulations a single primary budget impact estimate based on a single set of student response assumptions and have reserved all alternate impact scenarios for the ''Sensitivity Analysis'' section of this RIA.

As in the NPRM, the budget model applies assumptions for the probability that a student will transfer, remain in a program, or drop out of a program in reaction to the program's performance—passing, in the zone, failing, ineligible, or not evaluated. The model assumes that student response will increase as a program gets closer to ineligibility. The budget model assumptions regarding student responses to program results are provided in Table 3.4. These assumptions are based on our best judgment and consideration of comments. Coupled with the scenarios presented in the ''Sensitivity Analysis,'' these assumptions are intended to provide a reasonable estimation of the range of impact that the regulations could have on the budget.

Table 3.4: Student response assumptions

	Student Response		
Program Result	**Stay**	**Transfer**	**Drop**
First Zone	0.80	0.15	0.05
Second Zone	0.60	0.30	0.10
Third Zone	0.40	0.45	0.15
Fourth Zone	0.20	0.60	0.20
First Failure	0.40	0.45	0.15
Second Failure	0.20	0.60	0.20
Ineligibility	0.20	0.60	0.20
Passing or Not Evaluated	1.00	0.00	0.00

In comparison to the NPRM, the budget model for the final regulations assumes different levels of student response for each number of years that a program is in the zone. This adjustment is consistent with the modifications to the program performance assumptions to account for cumulative past program results. We made other adjustments to the student response assumptions for

greater simplicity and clarity, such as increasing or decreasing in equal amounts the proportion of students that are assumed to stay, transfer, and drop out for each result that brings a program closer to ineligibility. We continue to assume that a high proportion of students in poorly performing programs will transfer as a large majority of programs will meet the standards of the regulations and students will have access to information that will help them identify programs that lead to good outcomes, and, as our analysis shows, most students will have transfer options within geographic proximity or will be able to enroll in online programs. Further, as stated previously, we believe that institutions with programs that perform well under the regulations will grow existing programs and offer new ones.

In the revised model, the assumptions for student responses are always applied to the estimated enrollment in each program determined by the enrollment growth assumptions. While we expect that the disclosure of poor program performance to students, along with institutional reactions to a program's performance under the D/E rates measure, could result in reduced enrollment in poor-performing programs, we are applying the student response assumptions to the baseline enrollment to demonstrate the maximum impact of the regulations for the scenario presented.

Enrollment Growth Rate Assumptions

For FYs 2016 to 2024, the budget model assumes a yearly rate of growth or decline in enrollment of students receiving title IV, HEA program funds in GE programs. The loan volume projections in the Department's FY 2015 President's Budget (PB) are used as a proxy for the rate of change in enrollment.

To estimate the rate of change in enrollment for programs at public and private non-profit institutions, we used the projected growth rates in loan volumes for 2-year or less than 2-year public and non-profit institutions because almost all GE programs in these sectors are offered by such institutions. With respect to programs at for-profit institutions, we applied the projected loan volume growth rates for 2-year or less than 2-year for-profit institutions and 4-year private for-profit institutions, depending on the credential level of the program.

The Department used actual loan volume data through September 2013 for the growth rate estimates for FYs 2011 through 2013. The growth rate estimates for FY 2014 and subsequent years are the projected loan volume growth rates from the FY 2015 PB. For subsequent years, we assumed a reversion to long-run historical trends in loan growth for our enrollment assumption.

Table 3.5: Enrollment Growth Rate Assumptions

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%

Some commenters argued that the budget model in the NPRM underestimated the enrollment growth rate for the for-profit sector. In their analysis, these commenters used the average annual growth rate of enrollment at for-profit institutions over the past twenty years to estimate future enrollment. One commenter presented three student response scenarios using this enrollment growth rate assumption.[332] In the first scenario, the commenter assumed that 100 percent of students in a program that is made ineligible would not continue their education at an eligible program; in the second, 50 percent of students would continue; and, in the third, 25 percent of students would continue. In the 50 percent scenario, the analysis estimated between one and two million fewer students would access postsecondary education by 2020 and four million over a decade. The commenters' analysis of the 50 percent scenario estimated that by 2020, 736,000 to 1.25 million fewer female students, 268,000 to 430,000 fewer African-American students, and 199,000 to 360,000 fewer Hispanic students would continue their postsecondary education. In the 25 percent and 100 percent scenarios, the analysis estimated that three million to 5.7 million and 3.9 million to 7.5 million fewer students, respectively, would access postsecondary education by 2024.

We do not agree with the assertion that future enrollment patterns at for-profit institutions will be similar to enrollment over the past twenty years. Total fall enrollment in for-profit institutions participating in the title IV, HEA programs increased from 546,053 students in 1995 to 2,175,031 students in 2012, down from a peak of approximately 2.43 million in 2010.[333] Between 1995 and 2012, the average rate of enrollment growth at for-profit institutions that participate in the title IV, HEA programs was approximately 8.84 percent.[334] There is no evidence to suggest that enrollment at for-profit institutions will continue to grow at this rate, particularly in light of the recent decline in enrollment. The Department's estimate takes this more recent data into account and predicts a significant decline in loan volume, and accordingly enrollment, between FYs 2010 and 2016. After FY 2016, the Department predicts a 3 percent growth in loan volume, and enrollment, for all types of institutions in all sectors except four-year for-profit institutions, which we estimate to grow at a rate of 2 percent annually. We continue to believe that the PB loan volume projections used in the NPRM are reasonable and we have again adopted them for the purpose of estimating enrollment in this analysis.

Methodology for Net Budget Impact

The budget model estimates a yearly enrollment of students in GE programs for FYs 2016 to 2024 and the distribution of those students in programs by result (pass, zone, fail, not evaluated, ineligible). The net budget impact for each year is calculated by applying assumptions regarding the average amount of title IV, HEA program funds received to this distribution of students and programs.

To establish initial program performance results (passing, zone, failing, ineligible, and not evaluated) for FY 2016, we calculated program results under the D/E rates measure using the same methodology used to calculate the 2012 GE informational D/E rates except that a minimum n-size of 15 was applied to simulate the impact of the applicable four-year cohort period ''look back'' provisions of the regulations. Because the final regulations apply a four-year applicable cohort period for programs that do not have 30 or more students who completed the program over a two-year cohort period, the budget estimate is based on a minimum

[332] Jonathan Guryan and Matthew Thompson, Charles River Associates, Report on the Proposed Gainful Employment Regulation, 67–69.

[333] U.S. Department of Education, Digest of Education Statistics 2013, Table 303.20, ''Total fall enrollment in all postsecondary institutions participating in Title IV programs and annual percentage change,'' available at *http://nces.ed.gov/programs/digest/d13/tables/dt13_303.20.asp*; Data from IPEDS, ''Fall Enrollment Survey'' (IPEDS–EF:95–99); and IPEDS Spring 2001 through Spring 2013, Enrollment component (prepared October 2013).

[334] *Id.*

n-size of 15 because we assume programs with 15 students who completed the program over two years would have 30 students who completed the program over four years, making them subject to the regulations.

The yearly enrollment for each GE program is determined by using the actual enrollment of students in GE programs in FY 2010, as reported by institutions in the GE Data, as a starting point. Each subsequent year's enrollment in these programs, including for FYs 2016 to 2024, is estimated by applying the yearly enrollment growth rate assumptions provided in Table 3.5 to each program's FY 2010 enrollment.

Table 3.6 provides the estimated initial 2016 distribution of programs and enrollment by program result prior to any program transition or student response.

Table 3.6: Estimated Initial 2016 Distribution of Programs and Enrollment by Program Result

Performance Category	Programs	Enrollment
Passing	6,710	1,520,101
Zone	1,205	380,946
Failing	713	321,269
Ineligible	-	-
Not Evaluated	28,475	1,015,654
Total	**37,103**	**3,237,970**
Note: Model limited to programs that had enrollment in FY2010 GE reporting		

To this initial distribution of programs and students, the budget model applies the student response assumptions in Table 3.4 to estimate the number of students who will transfer to another program, drop-out, or remain in their program in reaction to the initial program results. The model then applies the program transition assumptions to the initial program results to create a new distribution of programs by result. The model repeats this process for each fiscal year through 2024.

This process produces a yearly estimate for the number of students receiving title IV, HEA program funds who will choose to (1) enroll in a better-performing program; (2) remain in a zone, failing, or ineligible program; or (3) drop out of postsecondary education altogether after their program receives a zone or failing result or becomes ineligible. An estimated net savings for the title IV, HEA programs results from students who drop out of postsecondary education in the year after their program receives D/E rates that are in the zone or failing or who remain at a program that becomes ineligible for title IV, HEA program funds. We assume no budget impact on the 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 primary budget assumptions, we multiply the number of students 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 per student by sector and credential level as reported in NPSAS:2012. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the title IV, HEA programs also reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. To determine the estimated impact from reduced loan volume, the yearly loan volumes are multiplied by the PB 2015 subsidy rates for the relevant loan type.

Methodology for Costs, Benefits, and Transfers

The estimated number of students who transfer, dropout, or stay in ineligible programs based on the student response assumption is used to quantify the costs and transfers resulting from the final regulations for each year from 2017 to 2024. 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 expenses to educate students who transfer.

In this analysis, student transfers could result from students who enrolled in one set of programs and switch to other programs or prospective students who choose to enroll in a program other than the one they would have chosen in the absence of the regulations.

To calculate the amounts of student aid that could transfer with students each year, we multiply 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 per student as reported in NPSAS:2012. To annualize the amount of title IV, HEA program fund transfers from 2016 to 2024, we calculate the net present value (NPV) of the yearly transfers using a discount rate of 3 percent and a discount rate of 7 percent.[335]

To calculate the transfer of instructional expenses, we apply the $4,529 average 2-year for-profit instructional expense per enrollee for award year 2010–2011 from IPEDS to the estimated number of annual student transfers for 2017 to 2024. To determine the additional cost of educating transferring students, we used the instructional expense per enrollee data from IPEDS to calculate the average instructional expense per enrollee of passing, zone, and failing programs in the 2012 GE informational D/E rates. As determined by this calculation, we apply a difference of $1,405 for students who transfer from failing to passing programs and $1,287 for those who transfer from zone to passing programs to the estimated number of students who will transfer between FYs 2017 and 2024.

Discussion of Costs, Benefits, and Transfers

We have considered the primary costs, benefits, and transfers of the transparency framework and accountability framework for the following groups or entities that will be affected by the final regulations:

- Students
- Institutions and State and local government
- Federal government

We discuss first the anticipated benefits of the regulations, including improved market information. We then assess the expected costs and transfers for students, institutions, the Federal government, and State and local governments.

[335] Office of Management and Budget, Circular A4: Regulatory Analysis (September 2003), available at *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf.*

Benefits

We expect the potential primary benefits of the regulations to be: (1) improved and standardized market information about GE programs that will 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, leading to a more competitive marketplace that encourages improvement; (2) improvement in the quality of programs, reduction in costs and student debt, and increased earnings; (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; (5) greater availability of programs that provide training in occupational fields with many well-paying jobs; and (6) for institutions with high-performing programs, potential growth in enrollments and revenues resulting from the additional market information that will permit those institutions to demonstrate to consumers the value of their GE programs.

Improved Market Information

The regulations will provide a standardized process and format for students, prospective students, and their families to obtain information about the outcomes of students who enroll in GE programs such as cost, debt, earnings, completion, and repayment outcomes. This information will result in more educated decisions based on reliable information about a program's outcomes. Students, prospective students, and their families will have extensive, comparable, and reliable information to assist them in choosing programs where they believe they are most likely to complete their education and achieve the earnings they desire, while having debt that is manageable.

The improved information that will be available as a result of the regulations will also benefit institutions. Information about student outcomes will provide a clear indication to institutions about whether their students are achieving positive results. This information will help institutions determine whether it would be prudent to expand programs or whether certain programs should be improved, by increasing quality and reducing costs, or eliminated. Institutions may also use this information to offer new programs in fields where students are experiencing positive outcomes, including higher earnings and steady employment. Additionally, institutions will be able to identify and learn from programs that produce exceptional results for students.

The taxpayers and the Government will also benefit from improved information about GE programs. As the funders and stewards of the title IV, HEA programs, these parties have an interest in knowing whether title IV, HEA program funds are benefiting students. The information provided in the disclosures will allow for more effective monitoring of the Federal investment in GE programs.

The Department received many comments about the utility and scope of the disclosures, as well as about the burden associated with the disclosure and related reporting obligations. These comments are addressed in §§ 668.411 and 668.412 of the preamble and in the PRA.

Benefits to Students

Students will benefit from lower costs, and as a result, lower debt, and better program quality as institutions improve programs that fail or fall in the zone under the D/E rates measure. Efforts to improve programs by offering better student services, working with employers to ensure graduates have needed skills, increasing academic quality, and helping students with career planning will lead to better outcomes and higher earnings over time. Students will also benefit by transferring to passing programs, increasing the availability of successful programs providing high-quality training at lower costs, and from the availability of new programs in fields where there are more jobs and greater earnings. Students who graduate with manageable debts and adequate earnings will be more likely to pay back their loans, marry, form families, purchase a car, buy a home, start or invest in a business, and save for retirement.

Benefits to Institutions and State and Local Governments

For institutions, the impact of the regulations will likely be mixed. Institutions with programs that do not pass the D/E rates measure, including programs that lose eligibility, are likely to see lower revenues and possibly reduced profit margins. 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.

Although low-performing programs may experience a drop in enrollment and revenues, we believe disclosures will increase enrollment and revenues in well-performing programs. Improved information from disclosures will increase market demand for programs performing well in areas such as completion, debt, earnings after completion, and repayment rates. We also believe these increases in revenue will offset any additional costs incurred and revenues lost by institutions as they improve the quality of their programs and lower their tuition prices in response to the regulations in order to ensure the long-term viability of their programs. While the increases or decreases in revenues for institutions are costs or benefits from the institutional perspective, they are transfers from a social perspective. The additional demand for education due to program quality improvement may be considered a social benefit.

State and local governments will benefit from improved oversight of their investments in postsecondary education. Additionally, State and local postsecondary education funding will be allocated more efficiently to higher-performing programs

Benefits to the Federal Government

A primary benefit of the regulations will be improved oversight and administration of the title IV, HEA programs. Additionally, Federal taxpayer funds will be allocated more efficiently to higher-performing programs, where students are more likely to graduate with manageable amounts of debt and gain stable employment in a well-paying field, increasing the positive benefits of Federal investment in title IV, HEA programs. Students will also be more likely to repay their loans, which will lower the cost of loans subsidized by the Federal Government.

Costs

Costs to Students

Students may incur some costs as a result of the regulations. We expect that over the long term, all students will have increased access to programs that lead to successful outcomes. In the short term, although we believe that many students in failing and zone programs will be able to transfer to passing programs, new programs, or non-GE programs that provide equivalent training, at least some students may be temporarily left without transfer options. We expect that many of these students will re-enter postsecondary education later, but understand that some students may not continue.

Costs to Institutions and State and Local Governments

As the regulations are implemented, institutions will incur costs as they make changes needed to comply with the regulations, including costs associated with the reporting and disclosure requirements. These costs could include: (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. This additional burden is discussed in more detail under *Paperwork Reduction Act of 1995*.

Institutions that make efforts to improve the outcomes of failing and zone programs will face additional costs. For example, institutions that reduce the tuition and fees of programs will see decreased revenue. An institution could also choose to spend more on curriculum development to for example, link a program's content to the needs of in-demand and well-paying jobs in the workforce, or allocate more funds toward other functions, such as hiring better faculty; providing training to existing faculty; offering tutoring or 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 D/E rates measure.

The costs of program changes in response to the regulations are difficult to quantify generally as they would vary significantly by institution and ultimately depend on institutional behavior. For example, institutions with all passing programs could elect to commit only minimal resources toward improving outcomes. On the other hand, they could instead make substantial investments to expand passing programs and meet increased demand from prospective students, which could result in an attendant increase in enrollment costs. Institutions with failing or zone programs could decide to devote significant resources towards improving performance, depending on their capacity, or could instead elect to discontinue one or more of the programs.

Many commenters argued that the types of investments and activities described by the Department here and in the NPRM that would improve program outcomes are not likely to affect program performance in the near term, so institutions would have to incur such costs in the expectation that program improvement would be reflected in future D/E rates. These comments are addressed in ''§ 668.404 Calculating D/E rates'' of the preamble.

State and local governments may experience increased costs as enrollment in public institutions increases as a result of some students transferring from programs at for-profit institutions. Several commenters argued that it costs taxpayers more to educate students at public institutions. These commenters relied on analysis [336] that examined direct costs and calculated that at for-profit 2-year institutions produce graduates at a cost to taxpayers that is $25,546 lower on a per-student basis than the public 2-year institutions.[337] Another study estimated that public institutions receive $19.38 per student in direct tax support and private non-profit institutions receive $8.69 per student for every $1 dollar received by for-profit institutions,[338] while another found that taxpayer costs of 4-year public institutions averaged $9,709 per student compared to $99 per student at for-profit institutions.[339] Focusing on State and local support only, updated data from the Digest of Education Statistics indicates that State and local government grants, contracts, and appropriations per full-time equivalent student in 2011–12 to 2-year public institutions (constant 2012–13 dollars) totaled $6,280 compared to $91 to 2-year for-profit institutions.[340]

Another study cited by commenters found that if the number of graduates from nine for-profit institutions in four states, California, New York, Ohio, and Texas, in the five-year period from AYs 2007–08 to 2011–12 transferred to public 2-year or 4-year institutions, it would have cost those States an additional $6.4 billion for bachelor's graduates and $4.6 billion for associate graduates (constant 2013 dollars).[341] The analysis submitted by commenters does not reflect the expected effect of the regulations as the majority of programs, even at for-profit institutions, are expected to pass the D/E rates measure and many students who switch programs are expected to do so within the for-profit sector, substantially reducing the impact on State and Local governments estimated in the studies cited by commenters. The Department recognizes that a shift in students to public institutions could result in higher State and Local government costs, but the extent of this is dependent on student transfer patterns and State and local government choices.

Further, if States choose to expand the enrollment capacity of passing programs at public institutions, 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. 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, including online offerings, that allow students to complete courses faster and at lower cost. 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.

Transfers

As students drop out of postsecondary education or remain in programs that lose eligibility for title IV, HEA Federal student aid, there will be a transfer of Federal student aid from those students to the Federal Government. Under the primary budget scenario, the annualized amount of this transfer of title IV, HEA programs funds over the FY 2014 to FY 2024 budget window is $423 million.

Additionally, as students change programs based on program performance and disclosures, revenues and expenses associated with students will transfer between postsecondary institutions. We estimate that approximately $2.55 billion (7 percent discount rate) or $2.52 billion (3 percent discount rate) in title IV, HEA Pell Grant and loan volume will transfer from zone, failing, and ineligible programs to passing 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 expect the title IV, HEA program funds associated with student transfers related to the final regulations to decline in future years. Additionally, we estimate that $1.24 billion (7 percent discount rate) or $1.22 billion (3 percent discount rate) in instructional expenses will transfer among postsecondary institutions.

Net Budget Impacts

As previously discussed, the Department made several assumptions about program transition, student response to program performance and enrollment growth in order to estimate the net budget impact of the regulations. The vast majority of students are assumed to resume their education at the same or another program in the event the program they are attending voluntarily closes, fails or falls in the zone under the D/E rates measure, or loses eligibility to participate in the title IV, HEA programs and the Department estimates no significant net budget impact from those students who continue their education. The student response scenarios presented in this RIA also assume that some students will not pursue, or continue to pursue, postsecondary education if warned about poor program performance or if their program loses eligibility, while other students will remain in an ineligible program that remains operational even though they will be unable to receive title IV, HEA program funds. The estimated potential net impact on the Federal budget results from Federal loans and Pell Grants not taken by these students.

As provide in Table 3.7, we estimate, under the primary student and program response scenario, that the regulations will result in reduced costs of $4.3 billion due to Pell Grants not taken between fiscal years 2014 and 2024. The estimated reductions in Pell Grant costs will be slightly offset by approximately $695 million in reduced net returns associated with lower Federal Direct Unsubsidized and PLUS loan volume. Accordingly, we estimate the net budget impact of the regulations will be $4.2 billion over the FY 2014 to FY 2024 budget window.

[336] Charles River Associates (2011).

[337] Bradford Cornell & Simon M. Cheng, Charles River Assoc. for the Coalition for Educ. Success, *An Analysis of Taxpayer Funding Provided for Post-Secondary Education: For-profit and Not-for-profit Institutions* 2 (Sept. 8, 2010) 16.

[338] Shapiro & Pham, *The Public Costs of Higher Education: A Comparison of Public, Private Not-For-Profit, and Private For-Profit Institutions,* (Sonoco 2010) 5.

[339] Klor de Alva, Nexus, *For-Profit Colleges and Universities: America's Least Costly and Most Efficient System of Higher Education,* August 2010.

[340] U.S. Department of Education, Digest of Education Statistics 2013, Table 333.10 and Table 333.55.

[341] Jorge Klor de Alva & Mark Schneider, Do Proprietary Institutions of Higher Education Generate Savings for States? The Case of California, New York, Ohio and Texas available at *http://nexusresearch.org/reports/StateSaving/How%20Much%20Does%20Prop%20Ed%20Save%20States%20v9.pdf.*

Table 3.7: Primary Budget Estimate

		2016	2017	2018	2019	2020	2021	2022	2023	2024
Enrollment		3,237,970	3,318,628	3,401,376	3,486,270	3,573,367	3,662,728	3,754,413	3,848,485	3,945,008
	Passing	1,520,101	1,557,072	1,465,515	1,683,584	1,697,608	1,749,853	1,814,372	1,879,106	1,945,703
	Zone	380,946	390,131	301,382	140,204	108,548	61,283	34,637	19,013	9,187
	Failing	321,269	328,179	126,553	55,957	47,978	25,867	15,457	6,574	3,294
	Ineligible	-	-	217,907	321,986	444,273	538,048	590,099	632,859	663,475
	Not Evaluated	1,015,654	1,043,246	1,290,019	1,284,538	1,274,960	1,287,677	1,299,848	1,310,933	1,323,349
Transfers or Dropouts from Zone, Failing, or Ineligible Programs										
	Transfers		206,200	276,987	277,829	339,454	365,875	379,837	393,080	404,614
	Dropouts		68,733	92,329	92,610	113,151	121,958	126,612	131,027	134,871
	Remaining		443,376	276,525	147,709	148,195	137,365	133,743	134,340	136,470
Title IV Aid Associated with Students who Drop or Remain in Ineligible Programs										
	Pell Grants		192,242,071	376,559,358	434,059,521	558,900,388	633,566,568	674,304,716	709,840,137	737,247,652
	Subsidized Loans		186,263,125	368,492,350	423,861,995	544,426,799	618,459,691	658,925,156	693,594,389	720,125,092
	Unsubsidized Loans		236,400,514	467,439,419	536,448,198	687,496,110	780,004,345	830,590,192	873,923,217	907,054,310
	PLUS Loans		34,018,998	67,706,866	78,698,969	102,172,579	116,899,155	124,958,062	131,839,083	137,124,154
Estimated Net Budget Impact using PB 2015 Subsidy Rates										
	Pell Grants		192,242,071	376,559,358	434,059,521	558,900,388	633,566,568	674,304,716	709,840,137	737,247,652
	Subsidized loans		17,974,392	43,076,756	53,533,770	72,517,650	86,646,203	97,784,493	104,316,596	108,882,914
	Unsubsidized loans		(32,055,910)	(54,269,717)	(58,204,629)	(69,918,354)	(74,880,417)	(72,510,524)	(75,244,789)	(78,188,082)
	PLUS Loans		(9,307,598)	(16,913,175)	(18,462,778)	(23,642,735)	(26,384,139)	(27,178,378)	(28,622,265)	(29,125,170)
	Total		168,852,955	348,453,222	410,925,883	537,856,948	618,948,215	672,400,307	710,289,679	738,817,314

In the NPRM, the Department estimated that the net budget impact of the proposed regulations would be $666 million in the ''low reaction'' scenario or $973 million in the ''high reaction'' scenario. The increased estimate in these regulations is due to the modified methodology for the budget model described in ''Methodology for net budget impacts'' that applies the student response assumption to the baseline estimated enrollment and not the decreased enrollment as a result of student transfers in prior years. We believe this revised approach captures the title IV, HEA program aid that students would have continued to receive in the absence of the regulations, not only for the first year after they drop out or remain in an eligible program, but also for subsequent

years as they continued their educations. While Table 3.8 presents the approximate effect on the estimated initial 37,103 programs with student enrollment in FY2010 that would first be evaluated under the regulations, it does not take into account new programs that may have been established since that time.

Table 3.8: Estimated Effect of the Regulations on Gainful Employment Programs

Programs	2016	2017	2018	2019	2020	2021	2022	2023	2024
Passing	6,710	6,710	7,471	10,510	10,413	10,695	11,180	11,604	12,009
Zone	1,205	1,205	1,178	562	415	231	123	65	31
Failing	713	713	653	237	197	91	53	23	11
Ineligible	-	-	463	919	1,282	1,614	1,769	1,868	1,922
Not Evaluated	28,475	28,475	27,338	24,875	24,795	24,471	23,978	23,543	23,130

The Department's calculations of the net budget impacts represent our best estimate of the effect of the regulations on the Federal student aid programs. However, these estimates will be heavily influenced by actual program performance, student response to program performance, and potential increases in enrollment and retention rates as a result of the regulations. For example, if students, including prospective students, react more strongly to the consumer disclosures or potential ineligibility of programs than anticipated and, if many of these students leave postsecondary education, the impact on Pell Grants and loans could increase substantially. Similarly, if institutions react to the regulations by modifying their program offerings, enrollment strategies, or pricing, the assumed enrollment and aid amounts could be overstated.

Over the last several years, we believe that institutions in the for-profit sector have made changes to improve program performance, particularly by reducing cost and eliminating some poorly performing offerings. Because the data available to analyze the regulations are based on older cohorts of students, the budget estimates may not reflect these changes. In addition, we are unable to predict the extent to which institutions will take advantage of the transition period provisions of the regulations to reduce costs to students in failing and zone programs. Although these factors are not explicitly accounted for in the estimates, we expect that they will operate to reduce the number of failing and zone programs and affected students, and in turn, lower the net budget impact estimate.

As previously stated, we do not estimate any significant budget impact stemming from students who transfer to another institution when a program they are attending or planned to attend voluntarily closes, fails or falls in the zone under the D/E rates measure, or loses eligibility to participate in the title IV, HEA programs. 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 programs that students choose to transfer to could have lower prices than zone, 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.

The effects previously described represent the estimated effects of the regulations during the initial period of time after the regulations take effect. We expect that the budget effects of the regulations will decline over time as programs that are unable to pass will be eliminated and using data about program outcomes, including D/E rates, institutions will be better able to ensure that their programs consistently meet the standards of the regulations.

This gradual decline in impact of the regulations may be similar to the pattern observed when institutional cohort default rates (CDR) were introduced in 1989 with an initial elimination of the worst-performing institutions followed by an equilibrium where institutions overwhelmingly meet the CDR standards. We do not expect the impact of the regulations to drop off as sharply as occurred with the introduction of institutional CDR because of the four year zone and due to the transition period provisions which could potentially extend eligibility for programs that might otherwise become ineligible.

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*), the accounting statement in Table 3.9 provides the classification of the expenditures associated with the regulations. The accounting statement represents our best estimate of the impact of the regulations on the Federal student aid programs.

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.

Table 3.9: Accounting Statement

Category	Benefits	
Improved market information and development of measures linking programs to labor market outcomes	Not Quantified	
Better return on money spent on education	Not Quantified	
Category	Costs	
Discount Rate	3%	7%
Additional expense of educating transfer students at passing programs	$373	$379
Cost of Compliance with Paperwork Burden	$50	$54
Category	Transfers	
Discount Rate	3%	7%
Transfer of Federal student aid money from failing programs to the Federal government when students drop out of programs	$423	$423
Estimated Transfer of revenues from non-passing programs to passing or zone programs as students transfer	$2,515	$2,554
Estimated Transfer of instructional expenses from non-passing programs to passing or zone programs as students transfer	$1,216	$1,235

Costs and Transfers Sensitivity Analysis

We also provide alternative accounting statements using varied program transition and student response assumptions to demonstrate the sensitivity of the net budget impacts to these factors. These scenarios illuminate how different student and program responses could affect the title IV, HEA programs and institutions offering GE programs. We offer extreme scenarios in order to bound the estimates of effects, although we believe these extreme scenarios are unlikely to occur.

Alternative Program Transition Assumptions

In addition to the primary program transition assumptions provided in Tables 3.1–3.3, we assumed two additional program transition scenarios, zero program transition and positive program transition. For the zero program transition, an extreme worst case scenario, we assume institutions will have no success in improving programs. Accordingly, for this scenario, the year 0 program results, calculated based on the outcomes of students who completed GE programs in FYs 2008 and 2009 as described in ''Program transition assumptions,'' are held constant for each cycle of the budget model. For the positive program transition, we assumed institutions would be highly successful in improving programs. This scenario simulates the effects of 25 percent greater improvement over the primary program transition scenario described in ''Program transition assumptions.'' Tables 3.10 and 3.11 provide the program transition assumptions for these alternative scenarios.

Table 3.10: Zero Program Transition Assumptions

	Performance Category in Year 1				
Prior Year Result	**Pass**	**Zone**	**Fail**	**NE**	**Ineligible**
Pass	1	0	0	0	0
Zone	0	1	0	0	0
Fail	0	0	0	0	1
Not Evaluated	0	0	0	1	0

	Performance Category in Year 2				
Prior Years Results	Pass	Zone	Fail	NE	Ineligible
YR0 Pass					
Yr1 Pass	100	0	0	0	0
Y1 Zone	0	100	0	0	0
YR1 Fail	0	0	0	0	100
YR1 Not Evaluated	0	0	0	100	0
YR1 Ineligible	0	0	0	0	100
YR0 Zone					
Yr1 Pass	100	0	0	0	0
Y1 Zone	0	100	0	0	0
YR1 Fail	0	0	0	0	100
YR1 Not Evaluated	0	0	0	100	0
YR1 Ineligible	0	0	0	0	100
YR0 Fail					
Yr1 Pass	100	0	0	0	0
Y1 Zone	0	100	0	0	0
YR1 Fail	0	0	0	0	100
YR1 Not Evaluated	0	0	0	100	0
YR1 Ineligible	0	0	0	0	100
YR0 Not Evaluated					
Yr1 Pass	100	0	0	0	0
Y1 Zone	0	100	0	0	0
YR1 Fail	0	0	0	0	100
YR1 Not Evaluated	0	0	0	100	0
YR1 Ineligible	0	0	0	0	100

	Performance Category in Subsequent Year				
	Pass	Zone	Fail	Ne	Ineligible
Prior Year Group:					
Good	100	0	0	0	0
Improving	0	100	0	0	0
Poor/Declining	0	0	100	0	
Fail Next	0	0	0	0	100
Ineligible	0	0	0	0	100
Not Evaluated	0	0	0	100	0

Table 3.11: Positive (+ 25 percent) Program Transition Assumptions

	Performance Category in Year 1				
	Pass	**Zone**	**Fail**	**NE**	**Ineligible**
Pass	82.75	3	0.75	13.5	0
Zone	38.25	30	18.75	13	0
Fail	25.25	15	0	11	48.75
Not Evaluated	6.5	0.75	0.75	92	0

	Performance Category in Year 2				
Prior Years Results	**Pass**	**Zone**	**Fail**	**NE**	**Ineligible**
YR0 Pass					
Yr1 Pass	97.75	0	0	2.25	0
Y1 Zone	48.25	24	14.75	13	0
YR1 Fail	30.25	12	0	11	46.75
YR1 Not Evaluated	16.5	0	0	83.5	0
YR1 Ineligible	0	0	0	0	100
YR0 Zone					
Yr1 Pass	92.75	0	0	7.25	0
Y1 Zone	43.25	27	16.75	13	0
YR1 Fail	25.25	15	0	11	48.75
YR1 Not Evaluated	11.5	0	0	88.5	0
YR1 Ineligible	0	0	0	0	100
YR0 Fail					
Yr1 Pass	87.75	0	0	12.25	0
Y1 Zone	38.25	30	18.75	13	0
YR1 Fail	0	0	0	0	100
YR1 Not Evaluated	6.5	0.75	0	92	0.75
YR1 Ineligible	0	0	0	0	100
YR0 Not Evaluated					
Yr1 Pass	92.75	0	0	7.25	0
Y1 Zone	43.25	27	16.75	13	0
YR1 Fail	25.25	15	0	11	48.75
YR1 Not Evaluated	11.5	0	0	88.5	0
YR1 Ineligible	0	0	0	0	100

	Pass	Zone	Fail	Ne	Ineligible
Prior Year Group:					
Good	97.75	0	0	2.25	0
Improving	53.25	21	12.75	13	0
Poor/Declining	33.25	32	21.75	13	0
Fail Next	20.25	17	0	11	51.75
Ineligible	0	0	0	0	100
NE	11.5	0	0	88.5	0

Alternative Student Response Assumptions

We also assumed two additional student response scenarios, zero student response and strong student response. For the zero program response, an extreme worst case scenario, we assumed students in zone and failing programs would not react to warnings and disclosures and instead, would remain in their programs until they are made ineligible. For the strong student response, we assumed students would be highly responsive to program performance. This scenario simulates the effects of 25 percent greater student reaction over the primary student response scenario described in ''Student response assumptions.'' Tables 3.12 and 3.13 provide the student response assumptions for these alternative scenarios.

Table 3.12: Zero Student Response Assumptions

	Student Response		
Program Result	**Stay**	**Transfer**	**Drop**
First Zone	1.00	0.00	0.00
Second Zone	1.00	0.00	0.00
Third Zone	1.00	0.00	0.00
Fourth Zone	1.00	0.00	0.00
First Failure	1.00	0.00	0.00
Second Failure	1.00	0.00	0.00
Ineligibility	1.00	0.00	0.00
Passing or Not Evaluated	1.00	0.00	0.00

Table 3.13: Strong (+ 25 percent) Student Response Assumption

	Student Response		
Program Result	**Stay**	**Transfer**	**Drop**
First Zone	0.75	0.19	0.06
Second Zone	0.50	0.38	0.13
Third Zone	0.25	0.56	0.19
Fourth Zone	0.00	0.75	0.25
First Failure	0.25	0.56	0.19
Second Failure	0.00	0.75	0.25
Ineligibility	0.00	0.75	0.25
Passing or Not Evaluated	1.00	0.00	0.00

The costs and transfers associated with the combinations of primary and alternative program and student response scenarios are provided in Tables 3.14–3.16.

Table 3.14: Costs and Transfers Associated with Zero Student Response Assumptions

Estimates	Low Program, Low Student		Main Program, Low Student		High Program, Low Student	
Average Annual Student Transfers over 2017-2024	-		-		-	
Average Annual Student Dropouts over 2017-2024	-		-		-	
	3%	7%	3%	7%	3%	7%
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 or remain in ineligible programs	$1,291	$1,275	$918	$905	$574	$567
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 3.15: Costs and Transfers Associated with Primary Student Response Assumptions

Estimates	Low Program, Main Student Assumptions		Main Program, Main Student Assumptions		High Program, Main Student Assumptions	
Average Annual Student Transfers over 2017-2024	416,538		330,484		223,719	
Average Annual Student Dropouts over 2017-2024	138,846		110,161		74,573	
	3%	7%	3%	7%	3%	7%
Additional expense of educating transfer students at passing programs	$470	$476	$373	$379	$254	$260
Transfer of Federal student aid money from failing programs to the Federal government when students drop out of programs or remain in ineligible programs	$565	$565	$423	$423	$277	$280
Estimated Transfer of revenues from non-passing programs to passing or zone programs as students transfer	$3,170	$3,212	$2,515	$2,554	$1,719	$1,763
Estimated Transfer of instructional expenses from non-passing programs to passing or zone programs as students transfer	$1,530	$1,550	$1,216	$1,235	$829	$851

Table 3.16: Costs and Transfers Associated with Strong (+ 25 percent) Student Response Assumptions

Estimates	Low Prog, High Stu		Main Program, High Student Assumptions		High Program, High Student Assumptions	
Average Annual Student Transfers over 2017-2024	520,813		404,069		279,640	
Average Annual Student Dropouts over 2017-2024	173,916		134,964		93,404	
	3%	7%	3%	7%	3%	7%
Additional expense of educating transfer students at passing programs	$588	$595	$466	$473	$317	$325
Transfer of Federal student aid money from failing programs to the Federal government when students drop out of programs or remain in ineligible programs	$384	$388	$299	$303	$214	$218
Estimated Transfer of revenues from non-passing programs to passing or zone programs as students transfer	$3,964	$4,016	$3,143	$3,192	$2,025	$2,077
Estimated Transfer of instructional expenses from non-passing programs to passing or zone programs as students transfer	$1,913	$1,938	$1,520	$1,543	$1,036	$1,063

4. Regulatory Alternatives Considered

As part of the development of these 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, protections for students in failing programs, exemptions for programs with low borrowing or default rates, rigorous approval requirements for existing and new programs, as well as other issues. Information about these proposals is available on the GE Web site at *http://www2.ed.gov/policy/highered/reg/hearulemaking/2012/gainfulemployment.html.* The Department also published proposed regulations in a notice of proposed rulemaking and invited public comment. We received comments, including proposals, on a wide range of issues related to the regulations. We have responded to these comments in the preamble of the final regulations.

In addition to the proposals from the non-Federal negotiators and the public, the Department considered alternatives to the

regulations based on its own analysis, including alternative provisions for the D/E rates measure, as well as alternative metrics. Important alternatives that were considered are discussed below.

Alternative Components of the 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. At an n-size of 10, about 50 percent of GE programs would be subject to evaluation under the D/E rates measure. However, these additional programs account for a relatively small proportion of students receiving title IV, HEA program funds for enrollment in GE programs. Although we believe an n-size of 10 would be reasonable for the D/E rates measure, we elected to retain the n-size of 30 and to include those who completed over a four-year period if needed to achieve a 30-student cohort for a given program. Our data show that, using the two-year cohort period, 5,539 programs have enough students who completed the program to satisfy an n-size of 30. These 5,539 programs represent approximately 60 percent of students who received title IV, HEA program funds for enrolling in a GE program. Further, we estimate that, using the four-year cohort period, 3,356 additional programs would meet an n-size of 30.

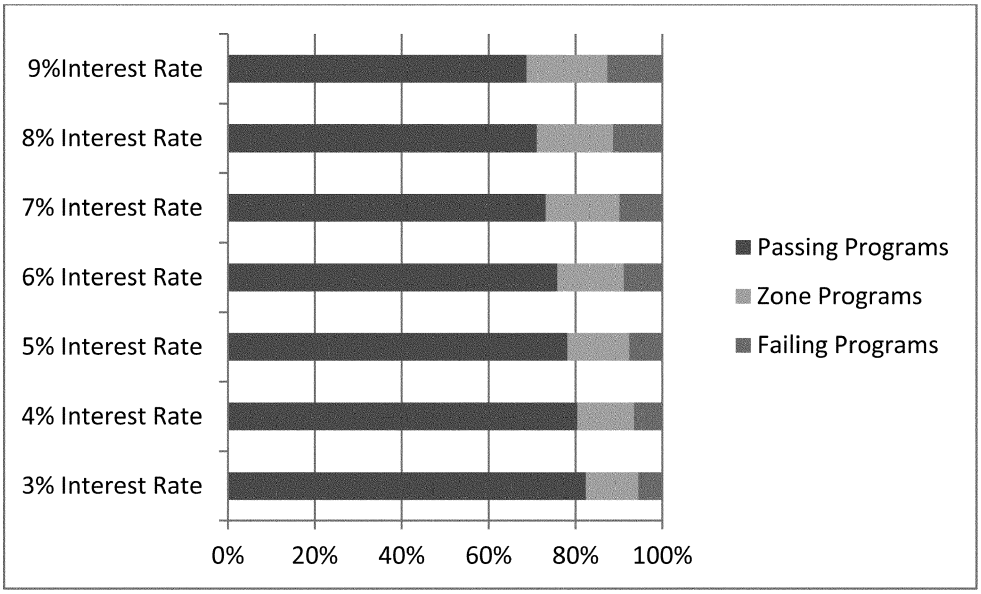
Table 4.1: Effect of N-Size on Programs Evaluated under the D/E Rates Measure

Result	N>=10		N>=30	
	Programs	Enrollment	Programs	Enrollment
Pass	8,799	2,021,644	4,094	1,679,616
Zone	1,394	500,055	928	453,904
Fail	857	427,982	517	387,763
Total	**11,050**	**2,949,681**	**5,539**	**2,521,283**

Interest Rates

As demonstrated by Table 4.2, the interest rate used in the D/E rates calculations has a substantial effect on a program's performance under the D/E rates measure.

Table 4.2: Interest Rate Impact on D/E Rates Results (Total 5,539 programs)



Although the calculation of the D/E rates measure is based on a group of students who completed a program over a particular two- or four-year period, the dates on which each of these students may have taken out a loan, and the interest rates on those loans, vary. The Department considered several options for the interest rate to apply to the D/E rates measure calculation. For the NPRM, we used the average interest rate over the six years prior to the end of the applicable cohort period on Federal Direct Unsubsidized loans. This proposal was 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 could lead to volatility in the results of programs under the D/E rates measure. Some commenters suggested using the actual interest rates on an individual borrower level, but we believe that would be unnecessarily complicated. Other

commenters suggested that we adopt a sliding scale, with interest rates averaged over a number of years that corresponds to program length. As discussed in ''§ 668.404 Calculating D/E Rates'' in *Analysis of Comments and Changes,* we adopted this proposal for the final regulations. For certificate, associate, and master's degree programs, the average interest rate over the three years prior to the end of the applicable cohort period on Federal Direct Unsubsidized loans will be used to calculate the D/E rates measure. For bachelor's, doctoral, and first professional degree programs, the average interest rate over the six years prior to the end of the applicable cohort period on Federal Direct Unsubsidized loans will be used. The undergraduate interest rate on these loans will be applied to undergraduate programs, and the graduate interest rate will be applied to graduate programs.

Table 4.3: Options for Determining Interest Rate[342] 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 regulations apply the same 10-, 15-, 20-year amortization periods by credential level as under the 2011 Prior Rule. In calculating the annual loan payment for the purpose of the D/E rates measure, a 10-year amortization period would be used for certificate and associate degree programs, 15 years for bachelor's and master's degree programs, and 20 years for doctoral and first professional degree programs. We presented at the negotiations, as an alternative, a 10-year amortization period for all programs, which we believe is a reasonable assumption. In the NPRM, we invited comment on a 10-year schedule for all programs and also on a 20-year schedule for all programs.

As discussed in the NPRM, we analyzed available data on the repayment plans that existing borrowers have selected and the repayment patterns of older loan cohorts and considered the repayment schedule options available under consolidation loan repayment rules. Although the prevalence of the standard 10-year repayment plan and data related to older cohorts could support a 10-year amortization period for all credential levels, the Department has retained the split amortization approach in the regulation. 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 provided in Tables 4.4 and 4.5, extending the amortization periods for lower credentials would reduce the number of programs that fail or fall in the zone under the D/E rates measure, and shortening the amortization period for higher credentials would increase the number of failing and zone programs. The greatest effect would be on graduate-level programs.

[342] Projected interest rates from Budget Service used in calculations requiring interest rates for future award years.

Table 4.4: D/E Rates Results by Sector and Credential (N-Size of 30, 10-Year Amortization for all Credential Levels)

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	242	8	3	45,696	40,695	3,886	1,115
	< 2 year	Certificate	49	47	2	0	9,609	9,147	462	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	86	3	2	20,666	17,679	1,992	995
		Post-Bacc Certificate	39	38	0	1	5,097	4,977	0	120
For-Profit	Total		4,193	2,723	908	562	2,333,187	1,440,196	474,526	418,465
	< 2 year	Certificate	1,100	877	185	38	216,363	154,749	51,207	10,407
		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	903	264	56	365,500	255,040	97,385	13,075
		Associate's	452	215	160	77	105,750	41,914	34,921	28,915
		Post-Bacc Certificate	2	2	0	0	156	156	0	0
	4-year	Certificate	267	169	70	28	84,610	47,102	30,205	7,303
		Associate's	514	183	167	164	669,030	240,135	174,977	253,918
		Bachelor's	407	176	52	179	618,330	447,758	74,024	96,548
		Post-Bacc Certificate	8	8	0	0	1,950	1,950	0	0
		Master's	171	153	6	12	226,106	214,922	7,909	3,275
		Doctoral	30	27	1	2	37,676	34,085	2,669	922
		1st Professional Degree	10	2	2	6	7,209	1,878	1,229	4,102
Overall Total			5,539	4,055	918	566	2,521,283	1,622,968	478,689	419,626

Table 4.5: D/E Rates Results by Sector and Credential (N-Size of 30, 20-Year Amortization for all Credential Levels)

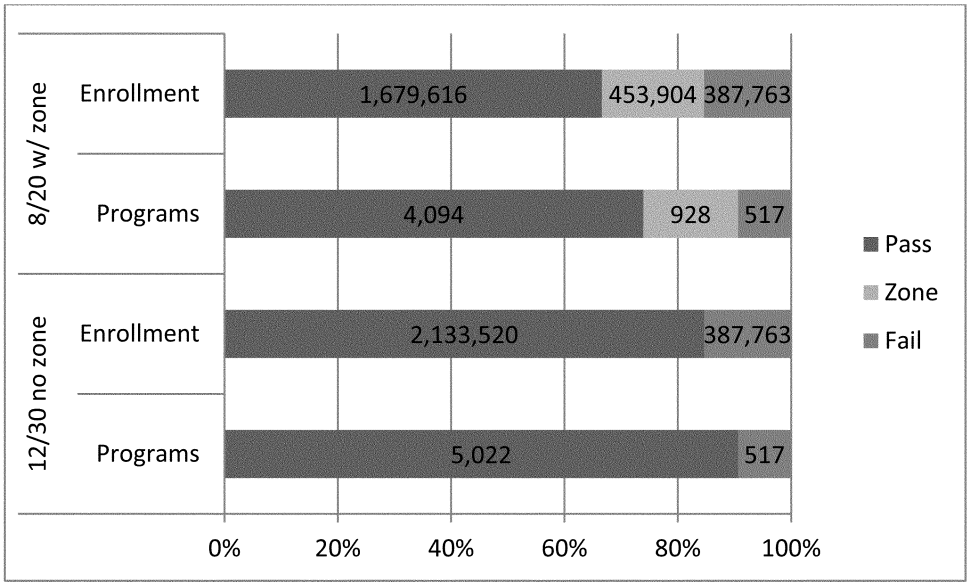
Sector	IHE Type	Credential Level	Programs	Passing Programs	Zone Programs	Failing Programs	Enrollment	Enrollment in Passing Programs	Enrollment in Zone Programs	Enrollment in Failing Programs
Public	Total		1,093	1,092	1	0	142,400	142,354	46	0
	< 2 year	Certificate	157	157	0	0	11,439	11,439	0	0
	2-3 year	Certificate	824	824	0	0	119,615	119,615	0	0
	4-year	Certificate	86	85	1	0	8,102	8,056	46	0
		Post-Bacc Certificate	26	26	0	0	3,244	3,244	0	0
Private	Total		253	250	2	1	45,696	44,581	998	117
	< 2 year	Certificate	49	49	0	0	9,609	9,609	0	0
	2-3 year	Certificate	73	73	0	0	10,307	10,307	0	0
		Post-Bacc Certificate	1	1	0	0	17	17	0	0
	4-year	Certificate	91	89	1	1	20,666	19,671	878	117
		Post-Bacc Certificate	39	38	1	0	5,097	4,977	120	0
For-Profit	Total		4,193	3,643	364	186	2,333,187	1,921,377	302,473	109,337
	< 2 year	Certificate	1,100	1,063	34	3	216,363	206,008	9,731	624
		Associate's	5	5	0	0	195	195	0	0
		1st Professional Degree	4	4	0	0	312	312	0	0
	2-3 year	Certificate	1,223	1,169	49	5	365,500	352,788	12,189	523
		Associate's	452	379	57	16	105,750	77,226	16,125	12,399
		Post-Bacc Certificate	2	2	0	0	156	156	0	0
	4-year	Certificate	267	239	24	4	84,610	77,307	7,002	301
		Associate's	514	350	118	46	669,030	415,112	206,900	47,018
		Bachelor's	407	233	73	101	618,330	527,631	44,833	45,866
		Post-Bacc Certificate	8	8	0	0	1,950	1,950	0	0
		Master's	171	159	4	8	226,106	222,831	2,055	1,220
		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	4,985	367	187	2,521,283	2,108,312	303,517	109,454

D/E Rates 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 regulations establish stricter passing thresholds than the thresholds in the 2011 Prior Rule. The passing threshold for the discretionary income rate is 20 percent instead of 30 percent, and the threshold for the annual earnings rate is 8 percent instead of 12 percent. Additionally, the 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 passing thresholds for the discretionary income rate and the annual earnings rate are based upon mortgage industry practices and expert recommendations. The justification for these thresholds is included in the Preamble.

Table 4.6: D/E Rates Measure Results for Alternative Thresholds



Estimated Effects of the D/E Rates Alternatives

In order to consider the alternatives for calculation of the D/E rates, we estimated the budget impact of the alternatives on program results under the D/E rate measure. The results are summarized in Table 4.7. To evaluate the alternatives, we used the same data, methods, and assumptions as the estimates described in ''Methodology for Costs, Benefits, and Transfers'' and the ''Net Budget Impacts'' sections of this RIA. The alternatives considered would result in different estimated distributions of enrollment in passing, zone, and failing programs under the regulations, leading to the results in Table 4.7.

Table 4.7: Estimated Effects of D/E Rates Alternatives

Estimates	N10, 10-15-20 Amortization	
Average Annual Student Transfers over 2017-2024	329,914	
Average Annual Student Dropouts over 2017-2024	109,971	
	3%	7%
Additional expense of educating transfer students at passing programs	$382	$388
Transfer of Federal student aid money from failing programs to the Federal government when students drop out of programs or remain in ineligible programs	$433	$433
Estimated Transfer of revenues from non-passing programs to passing or zone programs as students transfer	$2,576	$2,616
Estimated Transfer of instructional expenses from non-passing programs to passing or zone programs as students transfer	$1,246	$1,266

Estimates	N30, 10 year Amortization for all		N30, 20-year Amortization for all	
Average Annual Student Transfers over 2017-2024	321,663		162,551	
Average Annual Student Dropouts over 2017-2024	107,221		54,184	
	3%	7%	3%	7%
Additional expense of educating transfer students at passing programs	$368	$374	$179	$180
Transfer of Federal student aid money from failing programs to the Federal government when students drop out of programs or remain in ineligible programs	$412	$412	$192	$191
Estimated Transfer of revenues from non-passing programs to passing or zone programs as students transfer	$2,517	$2,558	$1,229	$1,241
Estimated Transfer of instructional expenses from non-passing programs to passing or zone programs as students transfer	$1,200	$1,219	$584	$589

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. Removing the annual earnings rate altogether would make ineligible programs that, based on expert analysis, leave students with manageable levels of debt. In some cases, programs may leave graduates with low earnings, but these students may also have minimal debt that is manageable at those earnings levels.

For these programs, rather than establish a minimum earnings threshold through a single discretionary earnings rate measure, we believe that students, using the information about program outcomes that will be available as a result of the disclosures, should be able to make their own assessment of whether the potential earnings will meet their goals and expectations.

Pre- and Post-Program 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 and to the NPRM, especially for short-term programs, and has some merit conceptually. While it is important that programs lead to earnings gains, we believe that the D/E rates measure better achieves the objectives of these regulations by assessing earnings in the context of whether they are at a level that would allow borrowers to manage their debt and avoid default.

pCDR

pCDR Measure

In the NPRM, the Department proposed that programs must pass a program-level cohort default rate (pCDR) measure, in addition to the D/E rates measure. Unlike the D/E rates measure, the pCDR measure would assess the outcomes of both students who complete GE programs and those who do not. The pCDR measure adopted almost all of the statutory and regulatory requirements of the institutional cohort default rate (iCDR) measure that is used to measure default rates at the institutional level for all title IV eligible institutions. As proposed, GE programs would fail the measure if more than 30 percent of borrowers defaulted on their FFEL or Direct Loans within the first three years of entering repayment. Programs that failed the pCDR measure for three consecutive years would become ineligible.

The Department strongly believes in the importance of holding GE programs accountable for the outcomes of students who do not complete a program and ensuring that institutions make meaningful efforts to increase completion rates. However, given the wealth of feedback we received, we believe further study is necessary before we adopt pCDR or another accountability metric that would take into account the outcomes of students who do not complete a program. Therefore, we are not adopting pCDR as an accountability metric. Using the information we receive from institutions through reporting, we will work to develop a robust

measure of outcomes for students who do not complete their programs.

We continue to believe that default rates are important for students to consider as they decide where to pursue, or continue, their postsecondary education and whether or not to borrow to attend a particular program. Accordingly, we are retaining pCDR as one of the disclosures that institutions may be required to make under § 668.412. We believe that requiring this disclosure, along with other potential disclosures such as completion, withdrawal, and repayment rates, will bring a level of accountability and transparency to GE programs with high rates of non-completion.

Table 4.8: Estimated Results under 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	Certificate	1,386	1,128	258	349,369	270,025	79,344
		Associate's	832	700	132	135,988	109,139	26,849
		Post-Bacc Certificate	2	2	0	156	156	0
	4-year	Certificate	398	337	61	90,875	83,496	7,379
		Associate's	958	746	212	774,875	302,358	472,517
		Bachelor's	721	679	42	737,414	701,022	36,392
		Post-Bacc Certificate	26	26	0	3,960	3,960	0
		Master's	218	218	0	235,113	235,113	0
		Doctoral	67	67	0	51,931	51,931	0
		1st Professional Degree	9	9	0	6,874	6,874	0
Overall Total			6,815	5,872	943	2,745,077	2,066,780	678,297

Table 4.9: Estimated Results under D/E rates measure + pCDR 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		1,507	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	310	6	29	52,305	43,776	3,692	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	107	3	17	24,706	19,499	1,992	3,215
		Post-Bacc Certificate	77	76	0	1	6,834	6,714	0	120
For-Profit	Total		6,082	4,071	748	1,263	2,666,984	1,517,809	301,309	847,866
	< 2 year	Certificate	1,275	938	151	186	224,500	138,444	38,452	47,604
		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	1,010	195	300	379,498	220,076	71,970	87,452
		Associate's	839	513	137	189	139,033	63,153	30,337	45,543
		Post-Bacc Certificate	2	2	0	0	156	156	0	0
	4-year	Certificate	412	274	57	81	93,097	52,045	27,557	13,495
		Associate's	971	510	140	321	781,846	148,293	81,531	552,022
		Bachelor's	738	509	58	171	746,345	602,143	46,313	97,889
		Post-Bacc Certificate	27	27	0	0	3,999	3,999	0	0
		Master's	227	213	4	10	238,863	234,930	1,511	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	5,834	755	1,345	2,914,376	1,743,750	305,222	865,404

pCDR Thresholds

As described above, we modeled the proposed pCDR measure on the iCDR measure that is currently used to determine institutional eligibility to participate in title IV, HEA programs. In addition to adopting the iCDR threshold under which an institution loses eligibility if it has three consecutive fiscal years of an iCDR of 30 percent or greater, we considered adopting the second iCDR threshold, pursuant to which 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.

Negative Amortization

The Department also considered in its design of the NPRM a variation on a repayment metric that would compare the total amounts that borrowers, both students who completed a program and students who did not, owed on their FFEL and Direct Loans at the beginning and end of their third year of repayment to determine if borrower payments reduced the balance on their loans over the course of that year. Different variations of this measure were considered, including a comparison of total balances and a comparison of principal balances. We considered using this metric in addition to the D/E rates measure to measure the performance of students who did not complete the program as well as those that did. 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 at this time from the data available.

Programs With Low Rates of Borrowing

Several negotiators and, as discussed in the preamble, many commenters argued that programs for which a majority of students do not borrow should not be subject to the D/E rates measure or should be considered to be passing the measure because results would not accurately reflect the level of borrowing by individuals enrolled in the program and the low cost of the program. They contended that low rates of borrowing indicate that a program is low cost and, therefore, of low financial risk to students, prospective students, and taxpayers.

In the NPRM, institutions would have been permitted 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.

As discussed in detail in ''668.401 Scope and Purpose,'' we have not retained these provisions for the final regulations. We do not believe the commenters presented an adequate justification for us to depart from the purpose of the regulations—to evaluate the outcomes of students receiving title IV, HEA program funds and a program's continuing eligibility to receive title IV, HEA program funds based solely on those outcomes—even for the limited purpose of demonstrating that a program is ''low risk.'' Further, we agree with the commenters who suggested that a program for which fewer than 50 percent of individuals borrow is not necessarily low risk to students and taxpayers. Because the proposed showing of mitigating circumstances would be available to large programs with many students, and therefore there may be significant title IV, HEA program funds borrowed for a program, it is not clear that the program poses less risk simply because those students, when considered together with individuals who do not receive title IV, HEA program funds, comprise no more than 49 percent of all students. We also note that, if a program is indeed ''low cost'' or does not have a significant number of borrowers, it is very likely that the program will pass the D/E rates measure.

Borrower Protections

During the negotiated rulemaking sessions, members of the negotiated rulemaking committee offered various proposals to provide relief to students in programs that become ineligible, for example, requiring institutions to make arrangements to reduce student debt. Although we developed a debt reduction proposal for consideration by the rulemaking committee, we did not include any borrower relief provisions in the NPRM and have not done so in the final regulations.

We developed our debt reduction proposal in response to suggestions from negotiators representing consumer advocates and students. We 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 D/E rates measure and pCDR measure. 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, during the transition period, would have alternatively allowed an institution to offer 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 D/E rates and pCDR measures. If an institution took advantage of this option, a program that would otherwise lose eligibility would avoid that consequence during the transition period.

We acknowledge the desire to ease the debt burden of students attending programs that become ineligible and to shift the risk to the institutions that are enrolling students in these programs. We also recognize that the loan reduction plan proposal would give institutions with the means to institute such a program more control over their performance under the D/E rates measure. However, the discussions among the negotiators made it clear that the issues remain extremely complex, as negotiators raised concerns about the extent to which relief would be provided, what cohort of students would receive relief, and whether the proposals made by negotiators would be sufficient. The Department is not prepared to address these concerns in these regulations at this time, but we will continue to explore options to address these concerns. However, we note that under these regulations, the student warnings and disclosure template will provide students with resources to compare programs where they may continue their training and potentially apply academic credits they have earned toward completion of another program.

5. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis presents an estimate of the effect on small entities of the 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. In the NPRM, the Secretary invited comments from small entities as to whether they believe the proposed changes would have a significant economic impact on them and requested evidence to support that belief. This final analysis responds to and addresses comments that were received.

Description of the Reasons That Action by the Agency Is Being Considered

The Secretary is creating through these final 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.

As described in this RIA, 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.

Succinct Statement of the Objectives of, and Legal Basis for, the Regulations

As discussed in the NPRM, these final regulations are intended to address growing concerns about high levels of loan debt for students enrolled in postsecondary education programs that presumptively provide training that leads to gainful employment in a recognized occupation. The HEA applies different criteria for determining the eligibility of these programs to participate in

the title IV, HEA programs. 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. This difference in eligibility is longstanding and has been retained through many amendments to the HEA. As recently as August 14, 2008, when the HEOA was enacted, 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.

Description of and, Where Feasible, an Estimate of the Number of Small Entities To Which the Regulations Will Apply

The regulations will apply to programs that, as discussed above, must prepare students for gainful employment in a recognized occupation to be eligible for title IV, HEA program funds. The Department estimates that significant number of programs offered by small entities will be subject to the regulations. As stated in connection with the 2011 Prior Rule, given private non-profit institutions are considered small entities regardless of revenues, a wide range of institutions will be covered by the regulations. These entities may include institutions with multiple programs, a few of which are covered by the regulations, as well as single-program institutions with well-established ties to a local employer base. Many of the programs that will be subject to the regulations are offered by for-profit institutions and public and private non-profit institutions with programs less than two years in length. We expect that small entities with a high percentage of programs that are failing or in the zone under the D/E rates measure will be more likely to discontinue operations than will large entities.

The structure of the regulations and the n-size provisions reduce the effect of the regulations on small entities but complicate the analysis. The 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, so the status as a small entity is determined at the institutional level. Table 5.1 presents the distribution of programs and enrollment at small entities by performance on the 2012 informational rates.

Table 5.1: Performance on D/E Rates Measure by Programs at Small Entities

Sector	IHE_type	Program count				Enrollment count			
		Total	Pass	Zone	Fail	Total	Pass	Zone	Fail
Private	< 2 year	49	47	2	0	9,609	9,147	462	462
	2-3 year	74	71	3	0	10,324	8,892	1,432	1,432
	4+ year	130	124	3	3	25,763	22,656	1,992	1,992
For-Profit	< 2 year	767	613	125	29	107,304	77,498	24,710	24,710
	2-3 year	435	313	85	37	48,142	32,473	11,148	11,148
	4+ year	51	30	10	11	6,532	4,128	846	846

One factor that could contribute to the effect of the regulations on a small entity is the number of programs it offers that are covered by the regulations and how those programs perform. If an institution only has a limited number of programs, the effect on the institution could be greater. Table 5.2 provides an estimate of the number of small entities that offer a limited number of GE programs and the number of these small entities where 50 percent or more of their programs could fail or fall in the zone under the D/E rates measure.

Table 5.2: Distribution and D/E Rates Measure Performance of Small Entities by Number of Programs

Number of Programs per Small Entity	Number of Small Entities	Number of Small Entities with More Than 50% Failing	Number of small entities with more than 50% of zone or failing
1	709	58	186
2	179	1	9
3	47	1	5
4	32	0	4
5	15	0	1
6	6	0	1
7	1	0	0
8	2	0	0
9	1	0	0
12	1	0	0
15	1	0	0

While private non-profit institutions are classified as small entities, our estimates indicate that very few programs at those institutions are likely to fail the D/E rates measure, with an even smaller number likely to be found ineligible. The governmental entities controlling public sector institutions are not expected to fall below the 50,000 population 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 D/E rates measure. Accordingly, our analysis of the effects on small entities focuses on the for-profit sector.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Regulations, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirements and the Type of Professional Skills Necessary for Preparation of the Report or Record

Table 5.3 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 regulations are estimated to increase burden on small entities participating in the title IV, HEA programs by 1,947,273 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 $71,172,816. 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 $18 million. This cost was based on an hourly rate of $36.55.

Table 5.3: Paperwork Reduction Act

Provision	Reg Section	OMB Control Number	Hours	Costs
Issuing and Challenging D/E Rates	668.405	OMB 1845-0123	80,670	2,948,481
Alternate Earnings Appeal	668.406	OMB 1845-0122	9,736	355,857
Consequences of GE Measures	668.410	OMB 1845-0123	427,091	15,610,175
Reporting Requirements of GE Programs	668.411	OMB 1845-0123	475,424	17,376,731
Disclosure Requirements for GE Programs	668.412	OMB 1845-0123	748,282	27,349,710
Calculating, Issuing, and Challenging Completion, Withdrawal, and Repayment Rates	668.413	OMB 1845-0123	203,147	7,425,023
Certification and Application Requirement for GE Programs	668.414	OMB 1845-0123	665	24,323
Draft Program Cohort Default Rates and Challenges	668.504	OMB 1845-0121	2,052	74,998
Program CDR - Uncorrected Data Adjustments	668.509	OMB 1845-0121	129	4,726
Program CDR - New Data Adjustments	668.510	OMB 1845-0121	31	1,143
Program CDR - Erroneous Data Appeals	668.511	OMB 1845-0121	-	-
Program CDR -Loan Servicing Appeals	668.512	OMB 1845-0121	45	1,649
Total			**1,947,273**	**71,172,816**

Identification, to the Extent Practicable, of All Relevant Federal Regulations That May Duplicate, Overlap, or Conflict With the Regulations

The 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 regulations.

Alternatives Considered

As previously described, we evaluated several alternative provisions for the regulations and their effect on different types of institutions, including small entities. As discussed in ''Regulatory Alternatives Considered,'' several different approaches were analyzed, including, regarding the D/E rates measure, the use of different interest rates, amortization periods, and minimum n-size for programs to be evaluated, and additional or alternative metrics such as pCDR, placement rates, pre- and post-program earnings comparison, and a negative amortization test. These alternatives are not specifically targeted at small entities, but the n-size alternative of 10 students completing a program may have had a larger effect on programs at small entities.

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Part III

Federal Communications Commission

47 CFR Parts 0 and 25
Comprehensive Review of Licensing and Operating Rules for Satellite Services; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 25

[IB Docket No. 12–267; FCC 14–142]

Comprehensive Review of Licensing and Operating Rules for Satellite Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes to amend its rules for licensing and operation of space stations and earth stations for communication by radio. The proposed changes would, among other things, facilitate international coordination of proposed satellite networks; eliminate the need to assess compliance with interim milestone requirements; revise bond requirements to more effectively deter spectrum warehousing; clarify requirements for routine earth station licensing; and expand applicability of routine licensing standards.

DATES: Submit comments on or before December 15, 2014 and reply comments on or before January 14, 2015.

ADDRESSES: You may submit comments, identified by IB Docket No. 12–267, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs.* Follow the instructions for submitting comments.
- *Paper filing:* Paper filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: William Bell (202) 418–0741 or Cindy Spiers (202) 418–1593, Satellite Division, International Bureau. For additional information concerning the information collection(s) contained in this document, contact Cathy Williams at 202–418–2918, or via the Internet at *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (*FNPRM*) in IB Docket No. 12–267, FCC 14–142, adopted and released on September 30, 2014. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554 and may be downloaded from the Commission's internet Web site at *https://apps.fcc.gov/edocs_public/Query.do?numberFld=14-142&numberFld2=&docket=12-267&dateFld=&docTitleDesc=.* The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or via Web site at *www.BCPIWEB.com.* Alternative formats are available to person with disabilities by sending email to *fcc504@fcc.gov* or calling the Consider & Governmental Affairs Bureau at 202–418–0530 (voice), or 202–418–0432 (tty).

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS): *http://fjallfoss.fcc.gov/ecfs2/. See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Paper filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Summary of Further Notice of Proposed Rulemaking

In the initial Notice of Proposed Rulemaking in IB Docket 12–267, 77 FR 67172, November 8, 2012, (*2012 NPRM*), the Commission proposed extensive changes in part 25. The Satellite Industry Association (SIA) and other parties filed comments in response to the *2012 NPRM.* In a Report and Order released in August 2013, the Commission adopted most of the changes proposed in the *2012 NPRM* but declined to rule on recommendations from commenters that could not properly be adopted without affording further opportunity for public comment. Some of the rule changes proposed in FCC 14–142 are based on such previous recommendations. In February 2014, an FCC staff working group issued recommendations for improving the Commission's procedures and management practices and eliminating or streamlining outdated rules in a *Process Reform Report.* Some of the recommendations concerned satellite-service regulation and licensing and are considered in FCC 14–142.

ITU Filings for GSO FSS Space Stations

The procedure for obtaining international recognition of satellite operation in non-planned Fixed-Satellite Service (FSS) bands under the Radio Regulations of the ITU includes several steps. First, an Advance Publication of Information (API) must be filed with the ITU. An API filing requires only a very general description of a proposed satellite network. Next, a Coordination Request must be filed. A Coordination Request is ''receivable'' between six months and two years after the associated API filing but may be submitted to the ITU simultaneously with an API filing. The date of receipt of the Coordination Request establishes the ''protection date'' of a satellite network, which is the basis of international coordination priority. A proposed satellite network must be coordinated with any co-frequency satellite network with an earlier ITU protection date that, according to certain criteria, is deemed to be ''affected'' by the proposed network.

The Commission's International Bureau submits an API or Coordination Request to the ITU for space station

operation in specified frequency bands at a specified orbital location only after a license application for the proposed space station operation has been filed with the Commission. The information required for a Commission space station license application is more specific than that required for an API or Coordination Request and includes technical data that would not be definitely known until significant progress has been made in the design of a proposed satellite. Consequently, an operator who decides to apply to the FCC for authority for space station operation in a new band and/or orbital location might not be prepared to submit a license application for such operation for a considerable time afterward.

In view of this, the *Process Reform Report* includes a recommendation for the Commission to consider adopting a procedure for filing satellite-network APIs and Coordination Requests prior to the filing of full license applications. Several parties address this issue in comments, and all of them support this recommendation.

We tentatively agree that it would serve the public interest for the Commission to adopt an optional procedure in which submission of APIs and Coordination Requests to the Commission for filing with the ITU for GSO space station operation in non-planned FSS bands would be a first step in an optional two-step license application process. More detailed information of the kind included currently in license applications would be due later. Given the specificity of the ITU's regulations pertaining to operation in FSS planned bands, we are not proposing to follow this procedure with respect to planned-band operation. We invite comment, however, as to whether the procedure should be available for other types of proposed space station operation. We contemplate that such requests would be electronically filed and considered in order of receipt and would be treated as confidential until the Commission submits the filings to the ITU. We invite comment as to whether the filing of such a request would be subject to the requirements in part 1, subpart G of the Commission's rules pertaining to filing fees.

We propose to adopt a two-year deadline for submitting the technical information needed to complete a satellite license application.

We invite comment on whether submission of a request for filing of an API and Coordination Request with a simplified description of the satellite network and a cost-recovery declaration should suffice to secure a position in a first-come, first-served space station application queue. A party that secures a place at the head of an application queue for space station operation in particular FSS frequency bands at a particular location in the GSO arc should not be free to walk away at some later time without any consequence, despite having preempted co-frequency applications for the same or a nearby orbital location in the meanwhile. We therefore propose a surety bond requirement, separate from the current post-licensing bond requirement in § 25.165. Such a bond would be payable if a party who has secured a spot in the first-come, first-served queue by submitting a draft API and Coordination Request fails to complete an acceptable license application on schedule or its license application is denied. We invite comment as to whether a surety bond created in connection with a request for an ITU filing should be released when the party in interest files a post-grant surety bond pursuant to § 25.165 or whether it would better serve the public interest to require an ''ITU filing bond'' to be maintained pending satisfaction of all milestone requirements.

A party that prefers to avoid the ITU filing bond would have the option of following the current procedure of filing a full license application concurrently with a request for submission of an API and Coordination Request. We invite comment as to whether a party should have the option to file an API and Coordination request without securing a spot in the first-come, first-served queue and without filing a bond. We also invite comment as to whether failure to meet the proposed two-year second-step filing deadline should count as a missed milestone for purposes of the ''three-strikes'' rule in § 25.159(d).

Milestones and Bonds

In order to prevent or deter spectrum warehousing, the Commission requires space station licensees to adhere to standard milestone schedules and file surety bonds. The milestone requirements for most space station licensees are codified in § 25.164 and are incorporated as conditions in license grants. Recipients of new licenses for geostationary-orbit (GSO) space stations, other than Direct Broadcast Satellite (DBS) and Satellite Digital Audio Radio Service (SDARS) space stations, are required to meet the following schedule:

- Enter into a binding contract for construction of the authorized satellite(s) by one year after the grant of the space station license;
- Complete critical design review for the satellite(s) by two years after the license grant;
- Begin construction of the satellite(s) by three years after the license grant;
- Launch and commence operation of the satellite(s) in the assigned orbital location(s) by five years after the license grant.

Recipients of new licenses for non-geostationary-orbit (NGSO) space stations are required to meet the following schedule:

- Enter into a binding contract for construction of the authorized satellite(s) by one year after the grant of the space station license;
- Complete critical design review for the satellite(s) by two years after the license grant;
- Begin construction of one satellite by two years and six months after the license grant;
- Launch and commence operation of the first satellite in the authorized orbit by three years and six months after the license grant.
- Bring all authorized satellites into operation by six years after the license grant.

These milestone schedules also apply to construction and launch of non-U.S.-licensed space stations approved for U.S. market access.

Under § 25.165, the recipient of a new license for a GSO space station of any type other than DBS and SDARS must file a surety bond in the amount of $3 million, payable to the U.S. Treasury in the event of a milestone default, and the recipient of a new license for an NGSO constellation must file a surety bond in the amount of $5 million. The Commission adopted the bond requirement to establish a market-based mechanism for ensuring that licensees are willing and able to proceed with satellite construction and to discourage warehousing of scarce resources. The bond amount is successively reduced when the Commission finds that the licensee has met interim milestone requirements. In the event that a licensee fails to meet a milestone deadline and the Commission does not find good cause for granting an extension of time, the license becomes void and the remaining bond amount is paid to the U.S. Treasury. We believe it is worthwhile to consider whether alternative approaches might shorten review periods, reduce administrative burdens, and increase certainty for licensees.

One possible approach is to accept corroborative affidavits from satellite manufacturers and evidence of appropriate payment, in addition to certifications from licensees, as *prima facie* proof of compliance with the contracting and CDR milestone

requirements. This would eliminate any need for submission and assessment of confidential contract and design documents in cases where such *prima facie* evidence is presented. Deciding, on a case-by-case basis, how much payment is appropriate at contract signing and upon completion of CDR could entail some adjudicatory difficulty, however. We invite further comment on this proposal.

We also invite comment on simplifying the milestone schedules. Specifically, we request comment on eliminating the milestone deadlines for contracting for satellite construction and commencing construction and retaining the CDR milestone requirement as the only intermediate milestone deadline prior to the deadline for launch. This would reduce paperwork burdens and afford more flexibility for licensees and significantly reduce administrative burdens for the Commission's staff. In addition, we invite comment on the advisability of eliminating all interim milestone requirements, which would reduce administrative burdens still further and eliminate any need for submission of confidential construction contracts or proprietary design packages. And we seek comment on making all interim milestone requirements optional, so that a party could volunteer for Commission review of any interim milestone at any time as a means of reducing its surety bond, without requiring every applicant to do the same.

We have several proposals regarding post-grant surety bonds. First, the currently prescribed bond amounts—$3 million for GSO space stations and $5 million for NGSO space stations—may be inadequate. These amounts were prescribed ten years ago and have never been adjusted. We propose to require bond payment amounts due in the event of default to be calculated based on the Gross Domestic Product Chain-type Price Index (GDP–CPI), so that adjustment for both past and future inflation (or deflation) will be routine and will take into account time that elapses from license grant to default, which could be as much as six years. We invite comment as to the appropriate baseline dollar amounts to be used for such calculations.

Second, from a public-interest standpoint, it is better for a satellite licensee to surrender a license soon after receiving it than to surrender it after holding it for several years—or, worse, to hold the license for five or six years and then request an unjustified extension of the milestone deadline for launch and commencement of operation. Should we therefore revise the bond rule to provide that the amount to be paid in the event a licensee surrenders a space station authorization without placing the authorized facility into operation or is found in default of the deadline for commencing in-orbit operation will increase progressively, *pro rata,* in proportion to the time that has elapsed since the license was granted? Rather than escalating the potential payment liability from a starting point of zero, initial liability could be set at an amount substantial enough to deter parties from filing applications for strategic motives with the intention of surrendering their licenses shortly after grant. We invite comment as to whether this approach should be combined with the current policy of reducing bond liability when it is found that a party has met an interim milestone. For example, should we make interim milestone showings optional and reduce bond payment liability for licensees that choose to submit such showings and demonstrate that they have met interim milestones within prescribed time periods?

If we were to assign queuing priority based on advanced ITU filings, as proposed above, we believe that the amount to be paid pursuant to an ''ITU filing bond'' in the event of default should be commensurate with post-grant bond payment liability, taking into consideration the amount of time that elapses before default occurs. We invite comment on this proposal and suggestions for other approaches that could strike a balance between achieving the desired flexibility with respect to ITU filings while preventing spectrum warehousing.

The Two-Degree Spacing Policy

The Commission's two-degree spacing policy, which has been in effect since 1983, applies to GSO FSS operation in the conventional C-band, the conventional and extended Ku-band, and the 20/30 GHz band. ''Two-degree spacing'' refers to angular separation in the GSO arc between adjacent co-frequency space stations. There are several aspects to this policy, which is embodied in part 25 rules pertaining to licensing of both earth stations and space stations.

Applicants for earth station licenses authorizing transmission to GSO FSS satellites in the conventional C-band, conventional or extended Ku-band, or 20/30 GHz band must demonstrate one of two things with respect to uplink operation. One option is to show that the proposed earth stations will meet ''routine'' limits on off-axis EIRP density (or equivalent limits on off-axis antenna gain and input power density) designed to prevent harmful interference with co-frequency GSO space stations at orbital locations two or more degrees from the ''target'' satellites that the earth stations would communicate with. Alternatively, for proposed operation that would exceed the relevant routine limits, an applicant must submit certification from the operator(s) of the target satellite(s) that the proposed non-conforming uplink operation has been coordinated with operators of adjacent co-frequency space stations and certify that it will operate in compliance with the coordination agreements.

License applicants for GSO FSS space stations must demonstrate the following with a technical analysis: (i) Their downlink transmissions will not harmfully interfere with reception of co-frequency downlink transmissions from any previously-licensed GSO satellite less than two degrees away or with reception of co-frequency downlinks from a current or future GSO satellite two degrees away by earth stations with gain patterns consistent with the relevant routine limits in § 25.209 and (ii) uplink transmissions to their space stations will not harmfully interfere with uplink reception of any previously licensed GSO space station less than two degrees away or with uplink reception of a current or future satellite two degrees away. Space station applicants have routinely requested permission to deviate from parameters assumed for purposes of such interference analysis when permitted under the terms of subsequent coordination agreements, however, and the Commission has routinely granted such requests.

Thus, under current rules and practice, operating authority may be obtained based on coordination agreements for a GSO FSS system that does not conform to technical limits for two-degree compatibility. In the event that a two-degree-compliant U.S.-licensed space station subsequently commences co-frequency operation at an adjacent orbital location, however, the operator(s) of the non-conforming space station and/or associated earth stations will have to curtail non-conforming transmit operation adversely affecting the newcomer's system unless the newcomer consents to it, and will have to accept any downlink interference from the newcomer resulting from the use of earth station antennas with non-conforming gain patterns.

Intelsat contends that the two-degree spacing rules hinder U.S.-licensed satellite operators from providing innovative ''broadband mobility''

services and services involving use of high power output to earth stations with small antennas and may place U.S.-licensed satellite operators at a competitive disadvantage compared with foreign-licensed operators that are granted access to the U.S. market. Intelsat proposes that instead of adhering to the two-degree spacing rules, the Commission should allow coordination between operators to control operational requirements and should resolve disputes based on ITU coordination priority.

We invite comment as to whether the Commission should require a new entrant to coordinate co-frequency, co-coverage operation with a U.S.-licensed operator that has been providing non-two-degree-compliant GSO FSS services without causing unacceptable interference. If we were to adopt such a policy, should coordination priority and protection rights between U.S. licensees, or operators with U.S. market access, be based on ITU filing priority, as Intelsat recommends, or should it be based on FCC application filing dates?

Section 25.140(a) requires license applicants for GSO FSS space stations to provide an interference analysis demonstrating that the proposed system will be compatible with previously authorized GSO space stations within two angular degrees of the proposed space station. Intelsat maintains that there is no need for such a showing because protection of adjacent satellites is ensured by rules requiring adherence to technical limits or coordination of non-conforming operation. Furthermore, Intelsat maintains that interference showings submitted pursuant to § 25.140(a) are often based on assumptions that may not accurately reflect the actual operational environment. We propose to amend § 25.140(a) in several respects. To begin with, for reasons stated below, we propose to remove the routine limits on the power spectral density or power flux-density of downlink transmission in the conventional Ku-band and 20/30 GHz bands from §§ 25.134, 25.138, and 25.212 and insert them in § 25.140(a) as coordination triggers for space station applicants and licensees. The rules do not currently specify routine limits for downlink transmission in the conventional or extended C-band, but taking into account the capabilities of current C-band satellites and typical operational conditions, we propose to amend § 25.140(a) to specify a 1 dBW/4 kHz coordination threshold for digital downlink transmission in the conventional or extended C-band and an 8 dBW/4kHz coordination threshold for analog downlink transmission in those bands.

Further, we propose to amend § 25.140(a) to allow applicants to provide certifications in lieu of an interference analysis. Under the amended rule that we propose, an applicant for a GSO FSS space station at an orbital location less than two degrees from the assigned location of a co-frequency space station could either certify that the proposed operation has been coordinated with the operator of the co-frequency satellite or submit an interference analysis demonstrating the compatibility of the proposed system with the co-frequency satellite. An applicant for space station operation (other than analog video operation) at a location two degrees or more from the nearest co-frequency satellite would not have to provide an interference analysis if it certifies that it will coordinate any uplink or downlink operation exceeding relevant routine limits with operators of co-frequency satellites within six degrees.

Because there is no EIRP density limit in the Commission's rules for analog video downlinks and the number of satellites transmitting analog video signals is gradually diminishing, we do not propose technical criteria for routine licensing of analog video space station operation. Rather, we propose to require such operation to be coordinated with operators of co-frequency satellites within six degrees of the proposed space station that are U.S.-licensed or approved for U.S. market access.

The First-Come, First-Served Procedure for GSO-Like Satellite Systems

The Commission adopted the first-come, first-served licensing procedure for ''GSO-like'' space stations—that is, GSO space stations designed for communication with earth stations with directional antennas—in 2003. We have requested comment on a proposal to eliminate the two-degree spacing policy and instead rely on ITU filing priority, which is also based on the first-come, first-served principle. More generally, we invite comment as to whether modification of the first-come-first-served procedure might be appropriate and how the statutory prohibition against assigning ''orbital locations or spectrum used for the provision of international or global satellite communications services'' by competitive bidding should affect consideration of this issue.

Other Proposed Changes in Part 25

The Commission is proposing other changes in part 25 as indicated in the following topic list. For details on these proposals, *see* FCC 14–142, available for download at *https://apps.fcc.gov/edocs_public/Query.do?numberFld=14-142&numberFld2=&docket=12-267&dateFld=&docTitleDesc=.*

A. Codification of Replacement Satellite Policies (Sections 25.157 and 25.158)
B. Licensing Rules for Earth Stations that Transmit to GSO Space Stations in FSS Frequency Bands
  1. Overview of Current Routine Licensing Rules (Sections 25.132, 25.134, 25.138, 25.209, 25.211, 25.212, 25.218, 25.220, 25.221, 25.222, 25.223, 25.226, and 25.227)
  2. Definition of ''theta''
  3. ''Plane Tangent to the GSO Arc''
  4. Emissions Outside the Plane Tangent to the GSO Arc
  5. Sidelobe and Backlobe Allowances
  6. EIRP Density Specifications for Cross-Polarized Signals
  7. Limits on Aggregate EIRP Density
  8. Operation With Contention Protocols
  9. Routine Licensing Criteria for Stations Transmitting Full-Transponder Analog Video Signals
  10. Analog Signal Bandwidth
  11. Criteria for Downlink Transmission
  12. Alternative Routine Licensing Criteria for 20/30 GHz Earth Stations
  13. Routine Gain Envelopes for 17/24 GHz BSS Feeder-Link Stations
  14. Other Proposed Changes in §§ 25.134 and 25.212
  15. Clarification of the Applicability of § 25.218
  16. Reference Bandwidth in EIRP Density Specifications in § 25.138
  17. Routine Licensing Criteria for Extended C-Band Stations
  18. Off-Axis Gain Standards for FSS Earth Stations
  19. Demonstrating Conformance With Limits on Off-Axis Gain and EIRP Density
  20. Coordination Requirements for Non-Conforming Earth Station Operation
  21. Other Proposed Changes in Licensing Rules for Earth Stations on Vessels, Vehicle Mounted Earth Stations, and Earth Stations Aboard Aircraft
C. Section 25.103 ''Definitions'' (Section 25.103)
  1. ''20/30 GHz Bands''
  2. ''Conventional C-Band'' ''Extended C-Band'' ''Conventional Ku-Band''
  3. ''NGSO FSS Gateway Earth Station''
  4. ''Permitted Space Station List''
  5. ''Plane Perpendicular/Tangent to the GSO Arc''
  6. ''Protection Areas''
  7. ''Skew Angle''
  8. ''Two-Degree-Compliant Space Station''
  9. ''VSAT Network''
D. Rules Pertaining to Dismissal of Applications (Sections 25.112 and 25.152)
E. Section 25.113 ''Station construction, launch authority, and operation of spare satellites''
F. Section 25.114 ''Applications for space station authorizations''
G. Further Proposed Changes in § 25.115 ''Applications for earth station authorizations''

H. Section 25.117 ''Modification of station license''
I. Section 25.118 ''Modifications not requiring prior authorization''
1. Earth station modifications
2. Fleet management rule
J. Section 25.119 ''Assignment or transfer of control of station authorization''
K. Section 25.129 ''Equipment authorization for portable earth-station transceivers''
L. Section 25.130 ''Filing requirements for transmitting earth stations''
M. Section 25.131 ''Filing requirements and registration for receive-only earth stations''
N. Section 25.133 ''Period of construction; certification of commencement of operation''
O. Other Proposed Changes in § 25.138
P. Service-Specific Space Station Licensing Rules
1. Section 25.143 ''Licensing provisions for the 1.6/2.4 GHz Mobile-Satellite Service and 2 GHz Mobile-Satellite Service''
2. Section 25.145 ''Licensing provisions for the Fixed-Satellite Service in the 20/30 GHz bands''
3. Section 25.146 ''Licensing and operating rules for the non-geostationary orbit Fixed-Satellite Service in the 10.7 GHz–14.5 GHz bands''
4. Section 25.147 ''Licensing provision for NGSO MSS feeder downlinks in the band 6700–6875 MHz''
5. Section 25.264 ''Requirements to facilitate reverse-band operation in the 17.3–17.8 GHz band of 17/24 GHz Broadcasting-Satellite Service and Direct Broadcast Satellite Service space stations''
6. Polarization Requirements for FSS Space Stations (Sections 25.210)
Q. Section 25.156 ''Consideration of applications''
R. Section 25.159 ''Limits on pending applications and unbuilt satellite systems''
S. Section 25.163 ''Reinstatement''
T. Section 25.165 ''Posting of bonds''
U. Section 25.202 ''Frequencies, frequency tolerance, and emission limits''
V. Section 25.203 ''Choice of sites and frequencies''
W. Operating Rules for Earth Stations
1. Section 25.204 ''Power limits for earth stations''
2. Section 25.205 ''Minimum angle of antenna elevation''
3. Section 25.211 ''Analog video transmissions in the Fixed-Satellite Service''
4. Section 25.258 ''Sharing between NGSO MSS Feeder links Stations and GSO FSS services in the 29.25–29.5 GHz bands''
X. Section 25.283 ''End-of-life disposal''

Regulatory Impact Conclusion

The amendments we propose would update the Commission's rules for satellite services to reflect evolving technology, eliminate unnecessary technical and information-filing requirements, and reorganize, clarify, and simplify existing requirements. We believe that these changes would serve the public interest by promoting compliance with the Commission's operating rules, improving the ability of the public and Commission to assess the interference potential of proposed operations, affording more flexibility for incorporating state-of-the-art design, easing administrative burdens, and facilitating rapid deployment of new and improved satellite services. We believe that these benefits would outweigh any resultant costs and that the rule changes would reduce net costs, on average, for applicants and licensees. We invite comment on these conclusions.

Ex Parte Presentations

We will continue to treat this proceeding as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with 47 CFR 1.1206(b). In proceedings governed by 47 CFR 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended,[1] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible economic impact on small entities of the rule changes proposed in the *FNPRM.* The IRFA is set forth in FCC 14–142 as Appendix D and is summarized here. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the comment deadlines specified above.

The Regulatory Flexibility Act requires that a regulatory flexibility analysis be prepared for rulemaking proceedings unless the agency certifies that the rule will not have a significant economic impact on a substantial number of ''small entities.'' The RFA generally defines the term ''small entity'' as referring to any ''small business,'' ''small organization,'' or ''small governmental jurisdiction.'' A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[2] The SBA considers a satellite telecommunications firm to be small if it has $32.5 million or less in annual receipts. Some earth station applicants and licensees that qualify as small firms by this criterion might be affected rule changes proposed in the *FNPRM.*

The *FNPRM* seeks comment on a variety of proposals for revision of rules governing licensing and operation of space stations and earth stations for provision of satellite communication services. Specifically, it proposes to:

- Allow space station applicants to file through the Commission a satellite network with the International Telecommunication Union up to two years before filing a complete space station application with the Commission.
- Eliminate some or all interim space station construction milestone requirements and simplify the showing needed to demonstrate compliance with the CDR milestone, if it is retained.
- Modify the space station bond requirements to provide better incentives against spectrum warehousing.

[1] 5 U.S.C. 601 *et seq.,* as amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996).

[2] Small Business Act, 15 U.S.C. 632 (1996).

• Modify the two-degree spacing policy to permit continued operation of a non-two-degree compliant satellite network to the extent that such operation can be coordinated with other operators prior to the introduction of a nearby two-degree-compliant satellite.

• Eliminate the requirement for a space station applicant that starts constructing its satellite prior to filing an application with the Commission to notify the Commission in writing that it is doing so at its own risk.

• Clarify the requirements to limit aggregate uplink power density from multiple earth stations transmitting to the same satellite.

• Provide for the automatic grant of applications for repositioning of space stations with a small offset from the originally authorized orbital location, and for minor repointing of space station antennas.

• Allow earth station operators to communicate with a replacement satellite deployed with a small offset from the originally authorized satellite without prior Commission authorization.

• Extend the frequency bands in which routine earth station licensing is permitted.

• Expand routine earth station license qualification options for 20/30 GHz earth station applicants.

• Clarify earth station off-axis antenna radiation pattern requirements, and the ranges over which the off-axis radiated power can exceed the specified limits.

• Permit earth station applicants to file off-axis antenna radiation charts instead of tables except in off-axis angular regions where the off-axis radiation exceeds specified limits.

• Eliminate the requirement for portable earth station manufacturers to demonstrate compliance with the radiated power limits in § 25.204 of the Commission's rules.

• Lower the minimum permissible elevation angle for earth stations operating in bands not shared with terrestrial services from five degrees to three degrees above the horizontal plane.

• Eliminate the restrictions on the center frequencies on which analog video transmissions in the 3700–4200 MHz band can be conducted.

• Eliminate antenna polarization requirements for space stations operating in the 4/6 GHz bands.

• Eliminate the cross-polarization requirement for FSS space stations.

• Eliminate a requirement for earth station applicants to measure and specify mid-band antenna gain.

• Eliminate a requirement to license receive-only earth stations communicating with non-U.S. licensed space stations approved for U.S. market access.

• Update and improve definitions.

Many of these proposed changes would reduce regulatory burdens for earth station applicants and licenses. The *FNPRM* invites comment from all interested parties. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in the *FNPRM,* which the Commission will consider in reaching its final conclusions and taking action in this proceeding.

Paperwork Reduction Act

The *FNPRM* proposes new and modified information collection requirements and also proposes to eliminate a number of existing information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the proposed information collection requirements. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,[3] we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.[4]

Ordering Clauses

It is ordered, pursuant to sections 4(i), 7(a), 11, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 161, 303(c), 303(f), 303(g), and 303(r), that the Further Notice of Proposed Rulemaking in IB Docket No. 12–267 is *adopted.*

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Further Notice of Proposed Rulemaking, including the initial regulatory flexibility act analysis, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* (1981).

List of Subjects in 47 CFR Part 25

Definitions, Earth stations, Space stations.

[3] Public Law 107–198.

[4] 44 U.S.C. 3506(c)(4).

Federal Communications Commission.

Sheryl D. Todd,

Deputy Secretary, Office of the Secretary, Office of Managing Director.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 0 and 25 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended, 47 U.S.C. 155, 255, unless otherwise noted.

■ 2. Amend § 0.457 by adding paragraph (d)(1)(vii)(C) to read as follows:

§ 0.457 Records not routinely available for public inspection.

* * * * *

(d) * * *

(1) * * *

(vii) * * *

(C) Draft APIs and Coordination Requests filed pursuant to § 25.110(b)(3) are not routinely available for public inspection before the Commission submits them to the ITU. Such ITU submissions will be announced by public notice pursuant to § 25.151(a).

PART 25—SATELLITE COMMUNICATIONS

■ 3. The authority citation for part 25 is revised to read as follows:

Authority: Interprets or applies sections 4, 301, 302, 303, 307, 309, 319, 332, 705, and 721 of the Communications Act, as amended, 47 U.S.C. 154, 301, 302, 303, 307, 309, 319, 332, 605, and 721, unless otherwise noted.

§ 25.103 [Amended].

■ 4. Amend § 25.103 as follows:

■ a. Remove the definitions of ''12/14 GHz band'' and ''C-band'';

■ b. Revise the definition of ''20/30 GHz bands'';

■ c. Add definitions of ''Conventional C-band,'' ''Conventional Ku-band,'' and ''Extended C-band'';

■ d. Revise the definition of ''NGSO FSS gateway earth station'';

■ e. Add definitions of ''Plane perpendicular to the GSO arc'' and ''Plane tangent to the GSO arc'';

■ f. Revise the definition of ''Protection areas'';

■ g. Add definitions of ''Skew angle,'' ''Two-degree-compliant space station,'' and ''VSAT network.''

* * * * *

20/30 GHz bands. The 18.3–18.8 GHz (space-to-Earth), 19.7–20.2 GHz (space-to-Earth), 28.35–28.6 GHz (Earth-to-space), and 29.25–30.0 GHz (Earth-to-

space) frequency bands, which the Commission has designated as primary for GSO FSS operation.

* * * * *

Conventional C-band. The 3700–4200 MHz (space-to-Earth) and 5925–6425 MHz (Earth-to-space) FSS frequency bands.

Conventional Ku-band. The 11.7–12.2 GHz (space-to-Earth) and 14.0–14.5 GHz (earth-to-space) FSS frequency bands.

* * * * *

Extended C-band. As used in this part, this term refers to the 3600–3700 MHz (space-to-Earth), 5850–5925 MHz (Earth-to-space), 6425–6700 (Earth-to-space), and 6700–7025 MHz (bi-directional) FSS frequency bands.

* * * * *

NGSO FSS gateway earth station. An earth station or complex of multiple earth station antennas supporting the routing and switching functions of an NGSO FSS system. An NGSO FSS gateway earth station does not originate or terminate communication traffic, but interconnects multiple user-operated earth stations operating in other frequency bands with primary terrestrial networks, such as the public switched telephone network and Internet networks, communicating with the user-operated earth stations via links with NGSO satellites. An NGSO FSS gateway earth station may also be used for telemetry, tracking, and command transmissions and is not for the exclusive use of any customer.

* * * * *

Plane perpendicular to the GSO arc. The plane that is perpendicular to the ''plane tangent to the GSO arc,'' as defined below, and includes a line between the earth station in question and the GSO space station that it is communicating with.

Plane tangent to the GSO arc. The plane defined by the location of an earth station's transmitting antenna and a line in the equatorial plane that is tangent to the GSO arc at the location of the GSO space station that the earth station is communicating with.

* * * * *

Protection areas. The geographic regions where U.S. Department of Defense meteorological satellite systems or National Oceanic and Atmospheric Administration meteorological satellite systems, or both such systems, receive signals from low earth orbiting satellites. Also, areas around NGSO MSS feeder-link earth stations in the 1.6/2.4 GHz Mobile-Satellite Service determined in the manner specified in § 25.203(j).

* * * * *

Skew angle. The angle between the minor axis of an axially asymmetric antenna beam and the plane tangent to the GSO arc.

* * * * *

Two-degree-compliant space station. A GSO FSS space station operating in the conventional or extended C-band, the conventional or extended Ku-band, or the 20/30 GHz bands within the routine limits on downlink PSD or PFD specified in § 25.140(a)(3) and communicating only with earth stations operating in conformance with routine uplink parameters specified in §§ 25.134, 25.138(a), 25.211(d), 25.212(c), (d), or (f), 25.218, 25.221(a)(1) or (a)(3), 25.222(a)(1) or (a)(3), 25.223(b), 25.226(a)(1) or (a)(3), or § 25.227(a)(1) or (a)(3).

* * * * *

VSAT network. A network consisting of ''remote'' earth stations with small antennas that communicate via one or more FSS space stations, which usually include one or more ''hub'' or ''gateway'' earth stations that route messages and may perform other network control functions.

■ 5. Amend § 25.110 by revising paragraphs (b) and (d) to read as follows:

§ 25.110 Filing of applications, fees, and number of copies.

* * * * *

(b) Submitting your application.

(1) All earth station license applications must be filed electronically on Form 312 in accordance with the applicable provisions of part 1, subpart Y of this chapter.

(2) Except as provided in paragraph (b)(3) of this section, applications for space station licenses must be filed electronically on Form 312 in accordance with the applicable provisions of part 1, subpart Y of this chapter and include all information required by § 25.114.

(3) A license application for a GSO FSS space station not subject to the provisions in Appendix 30A or 30B of the ITU's Radio Regulations may be submitted in two steps, as follows:

(i) Such an application may be initiated by filing, in accordance with the applicable provisions of part 1, subpart Y of this chapter, a draft API and Coordination Request for proposed space station operation in specified frequency bands at a specified orbital location with a letter signed by the party in interest or a designated representative requesting that the draft API and Coordination Request be submitted to the ITU and a declaration of acceptance of ITU cost-recovery responsibility in accordance with § 25.111(d). Such a filing need not include a completed Form 312.

(ii) An application initiated pursuant to paragraph (b)(3)(i) of this section may be completed by filing a complete Form 312 for the proposed space station and any other information required by § 25.114 within two years of the date of the public notice announcing the filing of the API and Coordination Request.

* * * * *

(d) An applicant must pay the appropriate filing fee in accordance with part 1, subpart G of this chapter, at the time when it files Form 312.

■ 6. Amend § 25.112 by revising the section heading, the first sentence in paragraph (b), and paragraph (c), and adding paragraph (d) to read as follows:

§ 25.112 Dismissal and return of applications.

* * * * *

(b) Applications for space station authority found defective under paragraph (a)(3) or (a)(4) of this section will not be considered. * * *

(c) The Commission will dismiss an application for failure to respond substantially within a specified time period to official correspondence or requests for additional information. Dismissal will be without prejudice unless the application is mutually exclusive pursuant to § 25.155, in which case it will be dismissed with prejudice.

(d) An application will be dismissed without prejudice as a matter of right if the applicant requests its dismissal prior to final Commission action.

■ 7. Amend § 25.113 by revising paragraphs (f) through (h) and adding paragraph (i) to read as follows:

§ 25.113 Station construction, deployment approval, and operation of spare satellites.

* * * * *

(f) Construction permits are not required for U.S.-licensed space stations, except for stations that the applicant proposes to operate to disseminate program content to be received by the public at large, rather than only by subscribers. Construction of a station for which a construction permit is not required may commence, at the applicant's own risk, prior to grant of a license.

(g) Except as set forth in paragraphs (h) and (i) of this section, approval for orbital deployment and a station license (*i.e.,* operating authority) must be applied for and granted before a space station may be deployed and operated in orbit. Approval for orbital deployment may be requested in an application for a space station license. However, an application for authority to deploy and operate an on-ground spare

satellite will be considered pursuant to the following procedures:

(1) Applications for deployment and operation of an on-ground spare NGSO-like satellite will be considered pursuant to the procedures set forth in § 25.157, except as set forth in paragraph (g)(3) of this section.

(2) Applications for deployment and operation of an on-ground spare GSO-like satellite will be considered pursuant to the procedures set forth in § 25.158, except as set forth in paragraph (g)(3) of this section.

(3) Neither paragraph (g)(1) nor (g)(2) of this section will apply in cases where the space station to be deployed is determined to be an emergency replacement for a previously authorized space station that has been lost as a result of a launch failure or a catastrophic in-orbit failure.

(h) Operators of NGSO satellite systems licensed by the Commission need not file separate applications to operate technically identical in-orbit spares deployed pursuant to a blanket license granted under § 25.114(a). However, the licensee must notify the Commission within 30 days of bringing an in-orbit spare into operation and certify that its activation has not increased the number of operating space stations above the number previously authorized and that the licensee has determined by measurement that the activated spare is operating within the terms of the license.

(i) *Replacement of Space Stations within the System License Term.* An operator of NGSO space stations under a blanket license granted by the Commission need not apply for license modification to deploy and operate technically identical replacement satellites in a previously-authorized orbit within the term of the system authorization. However, the licensee must notify the Commission of the intended launch at least thirty days in advance and certify that its operation of the additional space station(s) will not increase the number of operating space stations above the maximum number specified in the license.

■ 8. Amend § 25.114 by removing paragraph (c)(13) and revising paragraphs (a), (b), (c)(4)(vi)(D), (d)(10), (d)(15)(i), and (d)(15)(iii) and (iv) to read as follows:

§ 25.114 Applications for space station authorizations.

(a)(1) A license application filed pursuant to § 25.110(b)(2) for a GSO space station or NGSO space station or space station constellation must comprise a comprehensive proposal and must be submitted on FCC Form 312, Main Form and Schedule S, with attached exhibits required by paragraph (d) of this section.

(2) An application for blanket authority for an NGSO constellation of space stations that are not all technically identical must provide the information required by paragraphs (c) and (d) of this section for each type of station in the constellation.

(3) For an application filed pursuant to the two-step procedure in § 25.110(b)(3), the filing pursuant to § 25.110(b)(3)(ii) must be submitted on FCC Form 312, Main Form and Schedule S, with attached exhibits as required by paragraph (d) of this section, and must constitute a comprehensive proposal.

(b) Each application for a new or modified space station authorization must contain the formal waiver required by section 304 of the Communications Act, 47 U.S.C. 304.

(c) * * *

(4) * * *

(vi) * * *

(D) For a space station with steerable beams that are not shapeable, specify the applicable contours, as defined in paragraph(c)(4)(vi)(A) or (B) of this section, with a description of a proposed coverage area for each steerable beam or provide the contour information described in paragraph (c)(4)(vi)(C) of this section for each steerable beam.

(d) * * *

(10) Applications for space station authorizations in the 1.6/2.4 GHz or 2 GHz Mobile-Satellite Service must include information required by § 25.143(b);

* * * * *

(15) * * *

(i) Except as set forth in paragraph (d)(15)(ii) of this section, an applicant proposing to operate in the 17.3–17.7 GHz frequency band must demonstrate that the proposed space station will comply with the power flux density limits in § 25.208(w).

* * * * *

(iii) An applicant proposing to provide international service in the 17.7–17.8 GHz band must certify that it will meet the power flux density limits in § 25.208(c).

(iv) Any information required by §§ 25.264(a)(6), 25.264(b)(4), or 25.264(d).

* * * * *

■ 9. Amend § 25.115 as follows:

■ a. Revise paragraphs (a)(2)(iii) through (vii);

■ b. Remove paragraphs (a)(2)(viii) and (ix);

■ c. Revise paragraph (c)(1);

■ d. Remove from paragraph (c) the terms ''CSAT'' and ''CSATs'' wherever they appear;

■ e. Revise paragraph (e), paragraph (g) introductory text, and paragraphs (g)(1) and (2); and

■ f. Remove and reserve paragraph (h).

§ 25.115 Application for earth station authorizations.

(a) * * *

(2) * * *

(iii) The application meets all relevant routine licensing criteria in §§ 25.134, 25.211, or 25.212 or includes information filed pursuant to paragraph (g)(1) of this section indicating that off-axis EIRP density from the proposed earth stations will not exceed relevant routine levels specified in §§ 25.138(a) or 25.218; and

(iv) Operation of the proposed station has been successfully coordinated with terrestrial systems, if the station would transmit in the 5925–6425 MHz band; and

(v) The application includes an environmental impact statement pursuant to § 1.1311 of this chapter, if required; and

(vi) The applicant does not propose to communicate via non-U.S.-licensed satellites not on the Permitted Space Station List; and

(vii) If the proposed station(s) will transmit in the 28.35–28.6 GHz and/or 29.5–30 GHz bands, the applicant proposes to communicate only via satellites for which coordination has been completed pursuant to Footnote US334 of the U.S. Table of Frequency Allocations with respect to Federal Government systems authorized on a primary basis, under an agreement previously approved by the Commission and the National Telecommunications and Information Administration, and the applicant certifies that it will operate consistently with the agreement.

* * * * *

(c)(1) *Large Networks of Small Antennas operating in the 11.7–12.2 GHz and 14.0–14.5 GHz frequency bands with U.S.-licensed or non-U.S.-licensed satellites for domestic or international services.* Applications to license small antenna network systems operating in the 11.7–12.2 GHz and 14.0–14.5 GHz frequency band under blanket operating authority may be filed on FCC Form 312 or Form 312EZ, with a Schedule B for each large (5 meters or larger) hub station and each representative type of small antenna (less than 5 meters) operating within the network.

* * * * *

(e) License applications for earth stations operating in any portion of the

18.3–20.2 GHz and 28.35–30.0 GHz bands must be filed on FCC Form 312, Main Form and Schedule B, and must include any information required by paragraph (g) or (j) of this section or by § 25.130. An applicant may request authority for operation of GSO FSS earth stations in the 20/30 GHz bands without specifying the location of user terminals but must specify the number of terminals to be covered by the license, the geographic area(s) in which they will operate, and the location of hub and/or gateway stations.

* * * * *

(g) Applications for earth stations that will transmit to geostationary satellites in any portion of the 5850–7025 MHz, 12.75–13.25 GHz, 13.75–14.5 GHz, 24.75–25.25 GHz, 28.35–28.6 GHz, or 29.25–30.0 GHz band must include, in addition to the particulars of operation identified on Form 312 and associated Schedule B, the information specified in either paragraph (g)(1) or (2) below for each earth station antenna type.

(1) Specification of off-axis EIRP density calculated from measurements made consistent with the requirements in § 25.132(b)(1), in accordance with the following requirements. For purposes of this rule, the ''off-axis angle'' is the angle in degrees from a line between an earth station antenna and the target satellite.

(i) A plot of maximum co-polarized EIRP density in the plane tangent to the GSO arc, for off-axis angles from minus 180° to plus 180°;

(ii) A plot of maximum cross-polarized EIRP spectral density in the plane tangent to the GSO arc at off-axis angles from minus 10° to plus 10°;

(iii) A plot of maximum co-polarized EIRP density in the plane perpendicular to the GSO arc at off-axis angles from 0° to plus 30°;

(iv) A plot of maximum cross-polarized EIRP density in the plane tangent to the GSO arc at off-axis angles from minus 10° to plus 10°;

(v) A plot of maximum cross-polarized EIRP density in the plane perpendicular to the GSO arc at off-axis angles from minus 10° to plus 10°;

(vi) The relevant off-axis EIRP density envelopes in §§ 25.138, 25.218, 25.221, 25.222, 25.223, 25.226, or 25.227 must be superimposed on plots submitted pursuant to paragraphs (i) through (v) above.

(vii) The showing must include a supplemental table for each off-axis angular range in which the relevant routine EIRP density envelope will be exceeded, specifying angular coordinates in degrees off-axis and corresponding calculated off-axis EIRP density at 0.2 degree increments over the angular range in which the routine envelope will be exceeded and one degree on each side of that range.

(2) An applicant that certifies pursuant to § 25.132(a)(1) that a proposed antenna's measured gain pattern conforms to relevant standards in § 25.209(a) and (b) and that input power density to the antenna will not exceed a relevant limit in §§ 25.134, 25.211, or 25.212 need not provide a showing pursuant to paragraph (g)(1) of this section for operation with that antenna.

* * * * *

■ 10. Amend § 25.117 by adding paragraph (h) to read as follows:

§ 25.117 Modification of station license.

* * * * *

(h) Unless otherwise ordered by the Commission, an application for any of the following kinds of modification of the operation of a GSO space station will be deemed granted 35 days after the date of the public notice that the application has been accepted for filing, provided no objection is filed during the 30-day notice period and the application does not propose a change that would be inconsistent with a Commission rule or require modification of the BSS plan in Appendix 30 or the associated feeder link plan in Appendix 30A of the ITU Radio Regulations.

(1) Relocation of a DBS or GSO FSS space station by no more than 0.15 degrees from the initially authorized orbital location; or

(2) Repositioning one or more antenna beams by no more than 0.3 angular degrees from a line between the space station and the initially authorized boresight location(s).

■ 11. Amend § 25.118 by revising paragraphs (a), (b), and (e) to read as follows:

§ 25.118 Modifications not requiring prior authorization.

(a) *Earth station modifications, notification required.* Earth station licensees may make the following modifications without prior Commission authorization, provided they notify the Commission, using FCC Form 312 and Schedule B, within 30 days of the modification. The notification must be filed electronically through the International Bureau Filing System (IBFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter.

(1) Authorized VSAT earth station operators may add VSAT remote terminals without prior authorization, provided that they have complied with all applicable frequency coordination procedures in accordance with § 25.251.

(2) A licensee providing service on a private carrier basis may change its operations to common carrier status without obtaining prior Commission authorization. The licensee must notify the Commission using Form 312 within 30 days after the completed change to common carrier status.

(3) An earth station operator may change a point of communication without prior authorization, provided that the operator does not repoint the earth station's antenna and that (i) the change results from a space station relocation described in paragraph (e) of this section, or (ii) the new point of communication is a replacement GSO space station operated by the operator of the original point of communication within 0.15 degrees of orbital longitude of the same location, with authority to serve the U.S., and the change does not entail any increase in the earth station's EIRP or EIRP density.

(4) Licensees may make other changes to their authorized earth stations without prior authority from the Commission, provided the modification does not involve:

(i) An increase in EIRP or EIRP density (either main lobe or off-axis);

(ii) A change in operating frequencies;

(iii) A change from the originally authorized coordinates of more than 1 second in latitude or longitude for stations operating in frequency bands shared with terrestrial systems or more than 10 seconds of latitude or longitude for stations operating in frequency bands not shared with terrestrial systems;

(iv) A change in polarization;

(v) An increase in antenna height;

(vi) Antenna repointing; or

(iv) A change in the location of a remote control point.

(b) *Earth station license modifications, notification not required.* Notwithstanding paragraph (a) of this section, equipment in an authorized earth station may be replaced without prior authorization and without notifying the Commission if the new equipment is electrically identical to the existing equipment.

* * * * *

(e) *Relocation of GSO space stations.* A space station licensee may relocate a GSO space station without prior authorization, but upon 30 days prior notice to the Commission and any potentially affected licensed spectrum user, provided that the operator meets the following requirements. The notification must be filed electronically on Form 312 through the International

Bureau Filing System (IBFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter:

(1) The space station will be relocated to a position within ±0.15 degrees of another orbit location assigned to the same licensee.

(2) The licensee certifies that the space station will operate after the relocation within the technical parameters authorized and coordinated for the space station previously assigned to that location.

(3) The licensee certifies that it will comply with all the conditions of its license for operation at the changed location.

(4) The licensee certifies that it will limit operations of the space station to Tracking, Telemetry, and Command (TT&C) functions during the relocation and satellite drift transition period.

(5) The licensee certifies that it has coordinated the station-keeping volume of the relocated satellite with operators of adjacent space stations.

(6) The licensee certifies that the relocation will not result in a lapse of service for any current customer.

(7) If the space station to be relocated is a DBS space station, the licensee certifies that there will be no increase in interference due to the operations of the relocated space station that would require the Commission to submit a proposed modification to the ITU Appendix 30 Broadcasting-Satellite Service (''BSS'') Plan and/or the Appendix 30A feeder link Plan to the ITU Radiocommunication Bureau. A DBS licensee that meets this certification requirement is not subject to the requirements in paragraph (e)(2) of this section.

(8) A DBS licensee must also certify that it will meet the geographic service requirements in § 25.148(c) after the relocation.

■ 12. Amend § 25.129 by revising paragraph (c) to read as follows:

§ 25.129 Equipment authorization for portable earth-station transceivers.

* * * * *

(c) In addition to the information required by §§ 1.1307(b) and 2.1033(c) of this chapter, applicants for certification required by this section must submit any additional equipment test data necessary to demonstrate compliance with pertinent standards for transmitter performance prescribed in §§ 25.138, 25.202(d) and (f), and 25.216, must submit the statements required by § 2.1093(c) of this chapter, and must demonstrate compliance with the labeling requirement in § 25.285(b).

■ 13. Amend § 25.130 by revising paragraph (b), paragraph (g) introductory text, and the note to paragraph (g) to read as follows:

§ 25.130 Filing requirements for transmitting earth stations.

* * * * *

(b) A frequency coordination analysis in accordance with § 25.203(b) must be provided for earth stations transmitting in the frequency bands shared with equal rights between terrestrial and space services, except applications for user transceiver units associated with the NVNG mobile-satellite service, which must instead provide the information required by § 25.135, and applications for 1.6/2.4 GHz MSS user transceivers, which must demonstrate that the transceivers will operate in compliance with relevant requirements in § 25.213. Also, applications for transmitting earth stations must include any notification or demonstration required by any other relevant provision in § 25.203.

* * * * *

(g) Parties may apply, either in an initial application or an application for modification of license, for operating authority for multiple transmitting FSS earth stations that are not eligible for blanket or network licensing under another section of this part in the following circumstances:

* * * * *

Note to Paragraph (g): This paragraph does not apply to VSAT network applications filed pursuant to §§ 25.115(c) or 25.218; applications for 20/30 GHz hub stations filed pursuant to § 25.115(e); applications for NGSO FSS gateway earth stations filed pursuant to § 25.115(f); applications filed pursuant to §§ 25.221, 25.222, 25.226, or 25.227; or applications for 29 GHz NGSO MSS feeder link stations in a complex as defined in § 25.257.

■ 14. Amend § 25.131 by revising paragraphs (b) and (j)(2) to read as follows:

§ 25.131 Filing requirements and registration for receive-only earth stations.

* * * * *

(b) Receive-only earth stations in the Fixed-Satellite Service that operate with U.S.-licensed space stations, or with non-U.S.-licensed space stations that have been duly approved for U.S. market access, may be registered with the Commission in order to protect them from interference from terrestrial microwave stations in bands shared co-equally with the Fixed Service in accordance with the procedures of §§ 25.203 and 25.251, subject to the stricture in § 25.209(e).

* * * * *

(j) * * *

(2) Operators of receive-only earth stations need not apply for license authority to receive transmissions from non-U.S.-licensed space stations that have been duly approved for U.S. market access, provided the space station operator and earth station operator comply with all applicable rules in this chapter and with applicable conditions in the Permitted Space Station List or market-access authorization.

■ 15. Amend § 25.132 by revising the section heading and paragraphs (a) and (b) to read as follows:

§ 25.132 Verification of earth station antenna performance.

(a)(1) Except as provided in paragraph (a)(2) of this section, applications for transmitting earth stations in the Fixed-Satellite Service, including feeder-link stations, must include certification that the applicant has reviewed the results of a series of radiation pattern tests performed by the antenna manufacturer on representative equipment in representative configurations, and the test results demonstrate that the equipment meets relevant off-axis gain standards in § 25.209, measured in accordance with paragraph (b)(1) of this section. Applicants and licensees must be prepared to submit the radiation pattern measurements to the Commission on request.

(2) Applicants that specify off-axis EIRP density pursuant to § 25.115(g)(1) are exempt from the certification requirement in paragraph (a)(1) of this section.

(b)(1) For purposes of paragraph (a)(1) of this section and § 25.115(g)(1), the following measurements on a production antenna performed on calibrated antenna range must be made at the top and bottom of each frequency band assigned for uplink transmission:

(i)(A) Co-polarized gain in the azimuth plane must be measured across a range extending to 180 degrees on each side of the main-lobe axis, and the measurements must be represented in two plots: One across the entire angular range of ±180 degrees from the main-lobe axis and the other across ±10 degrees from the main-lobe axis.

(B) Co-polarized gain must be measured from 0 to 30 degrees from beam peak in the elevation plane.

(ii) Cross-polarization gain must be measured across a range of plus and minus 10 degrees from beam peak in the azimuth and elevation planes.

(iii) Main beam gain.

(iv) For antennas with asymmetric apertures or beams, where the minor axis of the antenna beam (major axis of

the antenna aperture) will not always be aligned parallel to the plane tangent to the GSO arc, measurements must be made at the worst-case skew angle at which the antenna will operate.

(2) The relevant envelope specified in § 25.209 must be superimposed on each measured pattern.

* * * * *

■ 16. Amend § 25.133 by removing and reserving paragraph (c), and revising paragraphs (a)(2), (b)(1)(v) and (vi), and (b)(2) to read as follows:

§ 25.133 Period of construction; certification of commencement of operation.

(a) * * *

(2) Operation of a network of earth stations at unspecified locations under an initial blanket license must commence within 12 months from the date of the license grant unless the Commission orders otherwise.

(b)(1) * * *

(v) A certification that the facility as authorized has been completed and that each antenna has been tested and found to perform within authorized gain patterns or off-axis EIRP density levels; and

(vi) The date when the earth station became operational.

(2) For FSS earth stations authorized under a blanket license, the licensee must notify the Commission when the earth station network commences operation. The notification should include the information described in paragraphs (b)(1)(i) through (iv) of this section and a certification that each hub antenna, and each type of antenna used in remote stations in the network, has been tested and found to perform within authorized gain patterns or off-axis EIRP density levels.

* * * * *

■ 17. Amend § 25.134 by removing paragraph (g), redesignating paragraph (h) as paragraph (g), revising the section heading and paragraphs (a) and (b), and adding paragraph (c) to read as follows:

§ 25.134 Licensing provisions for 4/6 GHz, 12/14 GHz, and 20/30 GHz VSAT networks.

(a) A license application for operation of a VSAT network in the 4/6 GHz bands may be routinely processed if frequency coordination has been satisfactorily completed pursuant to § 25.203 and the criteria in paragraph (a)(1) or (2) of this section are met:

(1)(i) Equivalent antenna diameter is 4.5 meters or more, and the applicant certifies pursuant to § 25.132(a)(1) that the off-axis gain of transmitting antennas in the network will not exceed the relevant levels specified in § 25.209(a) and (b);

(ii) The input power of any full-transponder analog video transmission will not exceed the relevant limit in Section 25.211(d), and the bandwidth and input power density of any other type of analog transmission will not exceed the relevant limits in § 25.212(d);

(iii) The power density of any digitally modulated carrier will not exceed $-2.7 - 10\log(N)$ dBW/4 kHz at the input of any network antenna. ''N'' is the number of network earth stations transmitting simultaneously in the same frequencies to the same target satellite, not counting burst collisions resulting from operation with a contention protocol. N=1 for any station not transmitting simultaneously with others on common frequencies to the same target satellite and stations in networks that permit such simultaneous co-frequency transmission only in contention protocol operation.

(2) The application is not subject to an exclusion in § 25.218(a)(1) or (2) and includes tables filed pursuant to § 25.115(g)(1) indicating that off-axis EIRP density from the proposed earth stations will not exceed relevant routine levels specified in § 25.218.

(b) Applications for VSAT operation in the 12/14 GHz bands may be routinely processed if the criteria in the following paragraph (1) or (2) are met.

(1) (i) Equivalent antenna diameter is 1.2 meters or more, and the applicant certifies pursuant to § 25.132(a)(1) that the off-axis gain of transmitting antennas in the network will not exceed the relevant levels specified in § 25.209(a) and (b);

(ii) The input power of any full-transponder analog video transmission will not exceed the relevant limit in § 25.211(d), and the bandwidth and input power density of any other type of analog transmission will not exceed the relevant limits in § 25.212(c);

(iii) The power spectral density of any digitally modulated carrier into any transmitting earth station antenna in the proposed network will not exceed $-14.0 - 10\log(N)$ dBW/4 kHz. N is the number of network earth stations that transmitting simultaneously in the same frequencies to the same target satellite, not counting packet burst collisions resulting from operation with a contention protocol. N=1 for any station not transmitting simultaneously with others on common frequencies to the same target satellite and stations in networks that permit such simultaneous co-frequency transmission only in contention protocol operation.

(2) The application is not subject to an exclusion in § 25.218(a)(1) or (2) and includes tables filed pursuant to § 25.115(g)(1) indicating that off-axis EIRP density from the proposed earth stations will not exceed relevant routine levels specified in § 25.218.

(c) Applications for VSAT stations that will transmit digitally modulated signals to GSO space stations in the 28.35–28.6 GHz and/or 29.25–30.0 GHz band may be routinely processed if the criteria in the following paragraph (1) or (2) are met:

(1) (i) Equivalent antenna diameter is at least 0.66 meters and the applicant certifies pursuant to § 25.132(a)(1) that the off-axis gain of transmitting antennas in the network will not exceed the relevant levels specified in § 25.209(a) and (b);

(ii) The power spectral density of any digitally modulated carrier into any transmitting earth station antenna in the proposed network will not exceed $3.5 - 10\log(N)$ dBW/MHz. ''N'' is the number of network earth stations transmitting simultaneously in the same frequencies to the same target satellite, not counting burst collisions resulting from operation with a contention protocol. N=1 for any station not transmitting simultaneously with others on common frequencies to the same target satellite and stations in networks that permit such simultaneous co-frequency transmission only in contention protocol operation.

(2) The application includes tables filed pursuant to § 25.115(g)(1) indicating that off-axis EIRP density from the proposed earth stations will not exceed relevant routine levels specified in § 25.138.

* * * * *

■ 18. Amend § 25.138 by removing and reserving paragraphs (c) through (e); removing paragraph (g); and revising the section heading, paragraph (a) introductory text, paragraphs (a)(1) through (5), and paragraph (b) to read as follows:

§ 25.138 Licensing requirements for GSO FSS Earth Stations in the 20/30 GHz bands.

(a) Applications for earth station licenses in the GSO FSS in the 20/30 GHz bands that indicate that the following requirements will be met and include the information required by relevant provisions in §§ 25.115 and 25.130 may be routinely processed:

(1) The EIRP spectral density of co-polarized signals in the plane tangent to the GSO arc, as defined in § 25.103, will not exceed the following values under clear sky conditions:

32.5-25log(θ)-10log(N)	dBW/MHz	for 2.0°≤θ≤7°.
11.35-10log(N)	dBW/MHz	for 7°≤θ≤9.23°.
35.5-25log(θ)-10log(N)	dBW/MHz	for 9.23°≤θ≤48°.
3.5-10log(N)	dBW/MHz	for 48°<θ≤180°.

Where θ is the angle in degrees from a line from the earth station antenna to the assigned location of the target satellite. For stations in networks that allow multiple terminals to transmit simultaneously in shared frequencies with equal on-axis EIRP, ''N'' is the maximum number of network earth stations transmitting simultaneously in the same frequencies to the same target satellite, not counting burst collisions resulting from operation with a contention protocol. N=1 for any station not transmitting simultaneously with others on common frequencies to the same target satellite and stations in networks that permit such simultaneous co-frequency transmission only in contention protocol operation.

(2) In the plane perpendicular to the GSO arc, as defined in § 25.103, the EIRP density of co-polarized signals will not exceed the following values under clear sky conditions:

35.5-25log(θ)-10log(N)	dBW/MHz	for 3.5°≤θ≤7°.
14.35-10log(N)	dBW/MHz	for 7°<θ≤9.23°.
38.5-25log(θ)-10log(N)	dBW/MHz	for 9.23°<θ≤48°.
6.5-10log(N)	dBW/MHz	for 48°<θ≤180°.

Where: θ and N are as defined in paragraph (a)(1) of this section.

(3) The EIRP density levels specified in paragraphs (a)(1) and (2) of this section may be exceeded by up to 3 dB, for values of θ >10°, over 10% of the range of theta (θ) angles from 10–180° on each side of the line from the earth station to the target satellite.

(4) The EIRP density of cross-polarized signals will not exceed the following values in the plane tangent to the GSO arc or in the plane perpendicular to the GSO arc under clear sky conditions:

22.5-25log(θ)-10log(N)	dBW/MHz	for 2.0°<θ≤7.0°.
1.35-10log(N)	dBW/MHz	for 7.0°<θ≤9.23°.

Where θ and N are as defined in paragraph (a)(1) of this section.

(5) A license application for a network using variable power-density control of earth stations transmitting simultaneously in shared frequencies to the same target satellite may be routinely processed if the applicant demonstrates the following:

(i) EIRP density from each station in the network will not exceed a level 1 dB below the levels specified in paragraphs (a)(1), (a)(2), and (a)(4) of this section, with the value of N=1.

(ii) Aggregate EIRP density toward any co-frequency space station other than the target satellite not resulting from colliding data bursts transmitted pursuant to a contention protocol will not exceed the limit specified in paragraph (a)(5)(i) of this section.

* * * * *

(b) Operation with off-axis EIRP density exceeding a relevant envelope specified in paragraph (a) of this section and applications proposing such operation are subject to coordination requirements in § 25.220.

* * * * *

■ 19. Amend § 25.140 by revising paragraphs (a) and (b)(3) to read as follows:

§ 25.140 Further requirements for license applications for geostationary space stations in the Fixed-Satellite Service and the 17/24 GHz Broadcasting-Satellite Service.

(a)(1) In addition to the information required by § 25.114, an applicant for GSO FSS space station operation involving transmission of analog video signals must certify that the proposed analog video operation has been coordinated with operators of authorized co-frequency space stations within 6 degrees of the requested orbit location.

(2) In addition to the information required by § 25.114, an applicant for a GSO FSS space station at an orbital location less than 2 degrees from the assigned location of an authorized co-frequency GSO space station must either certify that the proposed operation has been coordinated with the operator of the co-frequency space station or submit an interference analysis demonstrating the compatibility of the proposed system with the co-frequency space station. Such analysis must include, for each type of radio frequency carrier, the link noise budget, modulation parameters, and overall link performance analysis. (See Appendices B and C to Licensing of Space Stations in the Domestic Fixed-Satellite Service, FCC 83–184, and the following public notices, copies of which are available in the Commission's EDOCS database: DA 03–3863 and DA 04–1708.) The provisions in this paragraph do not apply to proposed analog video operation, which is subject to the requirement in paragraph (a)(1).

(3) In addition to the information required by § 25.114, applicants for GSO FSS space stations must provide the following for operation other than analog video operation:

(i) With respect to proposed operation in the conventional or extended C-band, certification that downlink EIRP density will not exceed 1 dBW/4kHz for digital transmissions or 8 dBW/4kHz for analog transmissions and that EIRP density from associated uplink operation will not exceed applicable envelopes in §§ 25.218 or 25.221(a) unless the non-conforming uplink and/or downlink operation is coordinated with operators of authorized co-frequency space stations at assigned locations within 6 degrees of the orbital location of the proposed space station.

(ii) With respect to proposed operation in the conventional or extended Ku-band, certification that downlink EIRP density will not exceed 10 dBW/4kHz for digital transmission or 17 dBW/4kHz for analog transmission and that associated uplink operation will not exceed applicable EIRP density envelopes in §§ 25.218, 25.222, 25.226, or 25.227 unless the non-conforming

uplink and/or downlink operation is coordinated with operators of authorized co-frequency space stations at assigned locations within 6 degrees of the orbital location of the proposed space station.

(iii) With respect to proposed operation in the 20/30 GHz band, certification that the proposed space stations will not generate power flux-density at the Earth's surface in excess of −118 dBW/m²/MHz and that associated uplink operation will not exceed applicable EIRP density envelopes in § 25.138(a) unless the non-conforming uplink and/or downlink operation is coordinated with operators of authorized co-frequency space stations at assigned locations within 6 degrees of the orbital location of the proposed space station.

(iv) With respect to proposed operation in other FSS bands, an interference analysis demonstrating compatibility with any previously authorized co-frequency space station at a location two degrees away or certification that the proposed operation has been coordinated with the operator(s) of the previously authorized space station(s). If there is no previously authorized space station at a location two degrees away, the applicant must submit an interference analysis demonstrating compatibility with a hypothetical co-frequency space station two degrees away with the same receiving and transmitting characteristics as the proposed space station.

(b) * * *

(3) Except as described in paragraph (b)(5) of this section, an applicant for a license to operate a 17/24 GHz BSS space station that will be located precisely at one of the 17/24 GHz BSS orbital locations specified in Appendix F of the Report and Order adopted May 2, 2007, IB Docket No. 06–123, FCC 07–76, must provide an interference analysis demonstrating the compatibility of its proposed network with any current or future authorized space station in the 17/24 GHz BSS that complies with the technical rules in this part and will be located at least 4 degrees from the proposed space station.

* * * * *

§ 25.142 [Amended].

■ 20. Amend § 25.142 by removing paragraph (a)(5).

■ 21. Amend § 25.143 by removing paragraph (c), redesignating paragraph (f) as paragraph (c), redesignating paragraph (h) as paragraph (d), and revising paragraph (a) to read as follows:

§ 25.143 Licensing provisions for the 1.6/2.4 GHz Mobile-Satellite Service and 2 GHz Mobile-Satellite Service.

(a) Authority to launch and operate a constellation of NGSO satellites will be awarded in a single blanket license for operation of a specified number of space stations in specified orbital planes. An individual license will be issued for each GSO satellite, whether it is to be operated in a GSO-only system or in a GSO/NGSO hybrid system.

* * * * *

■ 22. Amend § 25.145 by removing and reserving paragraph (f), removing paragraph (h), and revising the section heading and paragraph (e) to read as follows:

§ 25.145 Licensing provisions for the Fixed-Satellite Service in the 18.3–20.2 GHz and 28.35–30.0 GHz bands.

* * * * *

(e) *Prohibition of certain agreements.* No license shall be granted to any applicant for a space station in the Fixed-Satellite Service operating in portions of the 18.3–20.2 GHz and 28.35–30.0 GHz bands if that applicant, or any persons or companies controlling or controlled by the applicant, shall acquire or enjoy any right, for the purpose of handling traffic to or from the United States, its territories or possessions, to construct or operate space segment or earth stations, or to interchange traffic, which is denied to any other United States company by reason of any concession, contract, understanding, or working arrangement to which the Licensee or any persons or companies controlling or controlled by the Licensee are parties.

■ 23. Amend § 25.146 by removing paragraph (m) and.revising the second sentence in paragraph (a)(1) to read as follows:

§ 25.146 Licensing and operating rules for the non-geostationary orbit Fixed-Satellite Service in the 10.7 GHz-14.5 GHz bands.

(a) * * *

(1) * * * The PFD masks shall be generated in accordance with the specification stipulated in the most recent version of ITU–R Recommendation S.1503, ''Functional description to be used in developing software tools for determining conformity of non-geostationary satellite orbit fixed-satellite system networks with limits contained in Article 22 of the Radio Regulations.'' * * *

* * * * *

§ 25.147 [Removed and Reserved].

■ 24. Remove and reserve § 25.147.

■ 25. Amend § 25.151 by revising the section heading and paragraphs (a)(1), (a)(7) and (a)(8) and adding paragraphs (a)(9) and (10) to read as follows:

§ 25.151 Public notice.

(a) * * *

(1) The receipt of applications for new station authorizations, except applications for space station authorizations filed pursuant to § 25.110(b)(3)(i);

* * * * *

(7) Information which the Commission in its discretion believes to be of public significance;

(8) Special environmental considerations as required by part 1 of this chapter; and

(9) Submission of APIs and Coordination Requests to the ITU in response to requests filed pursuant to § 25.110(b)(3)(i).

(10) Receipt of information filed pursuant to § 25.110(b)(3)(ii).

* * * * *

§ 25.152 [Removed and Reserved].

■ 26. Remove and reserve § 25.152.

■ 27. Amend § 25.155 by removing from paragraph (a) the word ''electrical'' and revising paragraphs (b) and (c) to read as follows:

§ 25.155 Mutually exclusive applications.

* * * * *

(b) A license application for NGSO-like satellite operation, as defined in § 25.157, will be entitled to comparative consideration with one or more mutually exclusive applications only if the application is received by the Commission in a condition acceptable for filing by the ''cut-off'' date specified in a public notice.

(c) A license application for GSO-like satellite operation, as defined in § 25.158, will be entitled to comparative consideration with another application only if:

(1) The application is mutually exclusive with another GSO-like space station application; and

(2) The application is received by the Commission in a condition acceptable for filing at the same millisecond as the other application.

■ 28. Amend § 25.156 by removing and reserving paragraph (b) and revising paragraphs (d)(1) through (5) to read as follows:

§ 25.156 Consideration of applications.

* * * * *

(d)(1) Applications for NGSO-like satellite operation will be considered pursuant to the procedures set forth in § 25.157, except as provided in § 25.157(b).

(2) Applications for GSO-like satellite operation will be considered pursuant

to the procedures set forth in § 25.158, except as provided in § 25.158(a)(2).

(3) Applications for both NGSO-like satellite operation and GSO-like satellite operation in two or more service bands will be treated as separate applications for each service band, and each service band request will be considered pursuant to §§ 25.157 or 25.158, as appropriate.

(4) Applications for feeder link authority or intersatellite link authority will be treated like an application separate from its associated service band. Each feeder link request or intersatellite link request will be considered pursuant to the procedure for applications for GSO-like operation or NGSO-like operation, as applicable.

(5) In cases where the Commission has not adopted frequency-band specific service rules, the Commission will not consider applications for NGSO-like satellite operation after it has granted an application for GSO-like operation in the same frequency band, and it will not consider applications for GSO-like operation after it has granted an application for NGSO-like operation in the same band, unless and until the Commission establishes NGSO/GSO sharing criteria for that frequency band. In the event that the Commission receives applications for NGSO-like operation and applications for GSO-like operation at the same time, and the Commission has not adopted sharing criteria in that band, the Commission will divide the spectrum between GSO-like and NGSO-like licensees based on the proportion of qualified GSO-like and NGSO-like applicants.

* * * * *

■ 29. Amend § 25.157 by revising the section heading, paragraphs (a) and (b), paragraph (c) introductory text, paragraph (g)(1), and the last sentence in paragraph (g)(2) to read as follows:

§ 25.157 Consideration of applications for NGSO-like satellite operation.

(a) This section specifies the procedures for considering license applications for ''NGSO-like'' satellite operation, except as provided in paragraph (b) of this section. For purposes of this section, the term ''NGSO-like satellite operation'' is defined as:

(1) Operation of any NGSO satellite system, and

(2) Operation of a GSO MSS satellite to communicate with earth stations with non-directional antennas.

(b) The procedures prescribed in this section do not apply to an application by the licensed operator of an NGSO constellation or GSO MSS space station for authority to launch and operate a replacement satellite, or satellites, with the same operating frequencies as the satellite(s) to be replaced and (if the replacement satellite is GSO) at an orbital location within ±0.15 degrees of the assigned location of the satellite to be replaced and which will be launched before the satellite(s) to be replaced are, or is, retired from service or within a reasonable time after loss of a satellite during launch or due to premature failure in orbit.

(c) Each application for NGSO-like satellite operation that is acceptable for filing under § 25.112, except replacement applications described in paragraph (b) of this section, will be reviewed to determine whether it is a ''competing application,'' *i.e.,* filed in response to a public notice initiating a processing round, or a ''lead application,'' *i.e.,* all other applications for NGSO-like satellite operation.

* * * * *

(g)(1) In the event that a license granted in a processing round pursuant to this section is cancelled for any reason, the Commission will redistribute the bandwidth allocated to that applicant equally among the remaining applicants whose licenses were granted concurrently with the cancelled license, unless the Commission determines that such a redistribution would not result in a sufficient number of licensees remaining to make reasonably efficient use of the frequency band.

(2) * * * Parties already holding licenses for NGSO-like satellite operation in that frequency band will not be permitted to participate in that processing round.

* * * * *

■ 30. Amend § 25.158 by revising the section heading, paragraph (a), paragraph (b) introductory text, paragraphs (b)(2) and (c), and paragraph (d) introductory text to read as follows:

§ 25.158 Consideration of applications for GSO-like satellite systems.

(a)(1) Except as provided in paragraph (a)(2) of this section, this section specifies the Commission's procedures for considering license applications for ''GSO-like'' satellite operation. For purposes of this section, the term ''GSO-like satellite system'' means a GSO satellite designed to communicate with earth stations with directional antennas, including operation of GSO satellites to provide MSS feeder links.

(2) The procedures prescribed in this section do not apply to an application for authority to launch and operate a replacement satellite with the same operating frequencies and at the same orbital location as a space station currently licensed to the applicant, to be launched before the satellite to be replaced is retired from service or within a reasonable time after loss of the satellite to be replaced due to launch failure or premature failure in orbit.

(b) Except as provided in paragraph (a)(2) of this section, license applications for GSO-like satellite systems, including first-step filings pursuant to § 25.110(b)(3)(i), will be placed in a queue and considered in the order that they are filed, pursuant to the following procedure:

* * * * *

(2) If the application is acceptable for filing, the application will be placed on public notice pursuant to § 25.151.

(i) For applications filed pursuant to § 25.110(b)(3)(i), the public notice will announce that the API and Coordination Request has been submitted to the ITU. When further information is filed pursuant to § 25.110(b)(3)(ii), it will be reviewed to determine whether it is substantially complete within the meaning of § 25.112. If so, a second public notice will be issued pursuant to § 25.151 to give interested parties an opportunity to file pleadings pursuant to § 25.154.

(ii) For any other license application for a GSO-like satellite system, the public notice will announce that the application has been found acceptable for filing and will give interested parties an opportunity to file pleadings pursuant to § 25.154.

(c) An applicant for a license for a GSO-like satellite system is not allowed to transfer, assign, or otherwise permit any other entity to assume its place in any queue.

(d) In the event that two or more applications for GSO-like satellite systems are mutually exclusive within the meaning of § 25.155(c), the Commission will consider those applications pursuant to the following procedure:

* * * * *

■ 31. Amend § 25.163 by revising paragraph (a)(3) to read as follows:

§ 25.163 Reinstatement.

(a) * * *

(3) The petition sets forth with specificity the procedures that have been established to ensure timely filings in the future.

* * * * *

■ 32. Amend § 25.165 by revising the section heading, paragraphs (a)(1) through (4), and paragraphs (c) and (e), and adding paragraphs (f) and (g) to read as follows:

§ 25.165 Surety bonds.

(a) * * *

(1) An NGSO licensee must file a surety bond requiring payment, in the event of a default as defined paragraph (c) of this section, in an amount to be determined by adjusting a baseline amount of $[x] million for inflation in accordance with paragraph (a)(4) of this section, with the resulting dollar amount rounded to the nearest $10,000.

(2) A GSO licensee must file a surety bond requiring payment, in the event of a default as defined paragraph (c) of this section, in an amount to be determined by adjusting a baseline amount of $[y] million for inflation in accordance with paragraph (a)(4) of this section, with the resulting dollar amount rounded to the nearest $10,000.

(3) Licensees of satellite systems including both NGSO satellites and GSO satellites that will operate in the same frequency bands must file a bond requiring payment, in the event of a default as defined paragraph (c) of this section, in an amount to be determined by adjusting a baseline amount of $[x] million for inflation in accordance with paragraph (a)(4) of this section, with the resulting dollar amount rounded to the nearest $10,000.

(4) Inflation adjustment for purposes of paragraphs (a)(1) through (3) and paragraph (f) of this section shall be computed by multiplying the baseline dollar amount by the Bureau of Economic Analysis ''GDPChain-type Price Index'' (GDP–CPI) for the most recent quarter and dividing the product by the GDP–CDI for [year and quarter when inflation-adjustment rule is adopted].

* * * * *

(c) A licensee will be considered to be in default if it surrenders the license before meeting all milestone requirements or if it fails to meet any milestone deadline set forth in § 25.164, and, at the time of milestone deadline, the licensee has not provided a sufficient basis for extending the milestone.

* * * * *

(e) A replacement satellite is one that:

(1) Is authorized to be operated at an orbital location within 0.15 degrees of the assigned location of a GSO satellite licensed to the same party or is authorized for NGSO operation and will replace an existing NGSO satellite licensed to the same party;

(2) Is authorized to operate in the same frequency bands, and with the same coverage area as the satellite to be replaced; and

(3) Is scheduled to be launched so that it will be brought into use at approximately the same time as, but no later than, the existing satellite is retired.

(f) An applicant that has filed an API and Coordination Request pursuant to § 25.110(b)(3)(i) must obtain a surety bond in accordance with the requirements in paragraph (b) of this section. The bond must require payment, in the event of a default as defined in paragraph (g) of this section, of an amount to be determined by adjusting a baseline amount of $[$y_1$] [5] million in accordance with paragraph (a)(4) of this section, with the resulting dollar amount rounded to the nearest $10,000. The application will be returned as defective pursuant to § 25.112 if a copy of the required bond is not filed with the Commission within 30 days after release of a public notice announcing that the Commission has filed the API and Coordination Request with the ITU.

(g) An applicant or licensee will be deemed to be in default with respect to a bond filed pursuant to paragraph (f) of this section under any of the following circumstances:

(1) If the applicant fails to file complete Form 312 and Schedule S information pursuant to § 25.110(b)(3)(ii) within two years after the issuance of the public notice announcing the submission of the API and Coordination Request to the ITU.

(2) If the license application filed pursuant to § 25.110(b)(3) is dismissed and is not refiled prior to the two-year deadline in § 25.110(b)(3)(ii) or the application is denied and the ruling is administratively final.

(3) If a license granted for a space station proposed in the application filed pursuant to § 25.110(b)(3) is surrendered before the authorized space station is launched.

(4) If a license granted for the space station proposed in the application filed pursuant to § 25.110(b)(3) is declared null and void for failure to meet a milestone requirement in § 25.164 and the milestone ruling is administratively final.

■ 33. Amend § 25.202 by revising the table in paragraph (a)(1) and paragraph (g) to read as follows:

§ 25.202 Frequencies, frequency tolerance, and emission limits.

(a)(1) * * *

Space-to-earth (GHz)	Earth-to-space (GHz)
3.6–3.65	[8] 5.091–5.25
3.65–3.7	5.85–5.925
3.7–4.2	5.925–6.425
4.5–4.8	6.425–6.525
6.7–7.025 [8]	6.525–6.7
7.025–7.075	6.7–7.025
10.7–11.7 [8]	7.025–7.075
11.7–12.2	12.7–12.75
12.2–12.7	[8] 12.75–13.25
18.3–18.58 [1 2]	13.75–14
18.58–18.8	14–14.2
18.8–19.3	14.2–14.5
19.3–19.7	[8] 15.43–15.63
19.7–20.2	17.3–17.8
37.5–40 [3]	24.75–25.05
40–42	25.05–25.25
	[2] 27.5–28.35
	[4] 28.35–28.6
	[5] 28.6–29.1
	[6] 29.1–29.25
	[7] 29.25–29.5
	[4] 29.5–30.0
	47.2–50.2

[1] The 18.3–18.58 GHz band is shared co-equally with existing terrestrial radiocommunication systems until November 19, 2012.

[2] FSS is secondary to LMDS in this band.

[3] Use of this band by the Fixed-Satellite Service is limited to gateway earth station operations, provided the licensee under this Part obtains a license under part 101 of this chapter or an agreement from a part 101 licensee for the area in which an earth station is to be located. Satellite earth station facilities in this band may not be ubiquitously deployed and may not be used to serve individual consumers.

[4] This band is primary for GSO FSS and secondary for NGSO FSS.

[5] This band is primary for NGSO FSS and secondary for GSO FSS.

[6] This band is primary for MSS feeder links and LMDS hub-to-subscriber transmission.

[7] This band is primary for MSS feeder links and GSO FSS.

[8] Use of this band by NGSO FSS systems is limited to transmissions to or from gateway earth stations.

* * * * *

(g)(1) Except as provided in paragraph (g)(2) below, telemetry, tracking, and command signals must be transmitted at either or both edges of the allocated band(s).

(2) Additional, non-emergency telemetry, tracking, and command signals may be transmitted in frequencies within the assigned bands that are not at a band edge if such transmissions cause no more interference and require no greater protection from harmful interference than the communications traffic on the satellite network.

(3) Frequencies, polarization, and coding of telemetry, tracking, and command transmissions must be selected to minimize interference into other satellite networks.

■ 34. Amend § 25.203 by adding paragraph (c)(6), revising the first sentence in paragraph (f), and revising paragraphs (g)(1) and (j) to read as follows:

[5] The value of y_1 would be two fifths of the baseline amount specified in paragraph (a)(2) for a post-grant bond for a GSO licensee.

§ 25.203 Choice of sites and frequencies.

* * * * *

(c) * * *

(6) Multiple antennas in an NGSO FSS gateway earth station complex located within an area bounded by one second of latitude and one second of longitude may be regarded as a single earth station for purposes of coordination with terrestrial services.

* * * * *

(f) *Notification to the National Radio Astronomy Observatory:* In order to minimize possible harmful interference at the National Radio Astronomy Observatory site at Green Bank, Pocahontas County, W. Va., and at the Naval Radio Research Observatory site at Sugar Grove, Pendleton County, W. Va., any applicant for operating authority under this part for a new transmit or transmit-receive earth station, other than a mobile or temporary fixed station, within the area bounded by 39°15′ N. on the north, 78°30′ W. on the east, 37°30′ N. on the south and 80°30′ W. on the west or for modification of an existing license for such station to change the station's frequency, power, antenna height or directivity, or location must, when filing the application with the Commission, simultaneously notify the Director, National Radio Astronomy Observatory, P.O. Box No. 2, Green Bank, W. Va. 24944, in writing, of the technical particulars of the proposed station. * * *

(g) * * *

(1) Applicants for authority to operate a new transmitting earth station in the vicinity of an FCC monitoring station or to modify the operation of a transmitting earth station in a way that would increase the field strength produced at such a monitoring station above that previously authorized should consider the possible need to protect the FCC stations from harmful interference. Geographic coordinates of the facilities that require protection are listed in § 0.121(c) of the Commission's Rules. Applications for fixed stations that will produce field strength greater than 10 mV/m or power flux density greater than -65.8 dBW/m^2 in the authorized emission bandwidth at any of the referenced coordinates may be examined to determine the extent of possible interference. Depending on the theoretical field strength value and existing root-sum-square or other ambient radio field signal levels at the referenced coordinates, a condition to protect the monitoring station may be included in the station authorization.

* * * * *

(j) Applicants for non-geostationary 1.6/2.4 GHz Mobile-Satellite Service/Radiodetermination-Satellite Service feeder links in the 17.7–20.2 GHz and 27.5–30.0 GHz bands must coordinate with licensees of Fixed-Satellite Service and terrestrial-service systems sharing the band to determine geographic protection areas around each non-geostationary Mobile-Satellite Service/Radiodetermination-Satellite Service feeder-link earth station.

* * * * *

§ 25.204 [Amended].

■ 35. Amend § 25.204 by removing the last sentence from paragraph (e)(1).

■ 36. Revise § 25.205 to read as follows:

§ 25.205 Minimum antenna elevation angle.

(a) Earth station antennas may not transmit at elevation angles less than 5 degrees, measured from the horizontal plane to the direction of maximum radiation, in a frequency band shared with terrestrial radio services or at elevation angles less than 3 degrees in other frequency bands. In some instances, it may be necessary to specify greater minimum elevation angles because of interference considerations.

(b) ESAAs in aircraft on the ground may not transmit at elevation angles less than 3 degrees. There is no minimum angle of antenna elevation for ESAAs while airborne.

■ 37. Amend § 25.209 by revising paragraphs (a) through (c), removing and reserving paragraph (e), removing from paragraph (f) the word ''procedures'' wherever it appears and adding in its place the word ''requirements,'' and revising paragraph (h) to read as follows:

§ 25.209 Earth station antenna performance standards.

(a) Except as provided in paragraph (f) of this section, the gain of any earth station antenna operating in the Fixed-Satellite Service, including earth stations providing feeder links for satellite services other than FSS, may not exceed the following limits:

(1) In the plane tangent to the GSO arc, as defined in § 25.103, for earth stations not operating in the conventional Ku-band, the 28.35–30 GHz band, or the 24.75–25.25 GHz band:

$29-25\log_{10}\theta$	dBi	for $1.5° \le \theta \le 7°$.
8	dBi	for $7° < \theta \le 9.2°$.
$32-25\log_{10}\theta$	dBi	for $9.2° < \theta \le 48°$.
-10	dBi	for $48° < \theta \le 180°$.

Where θ is the angle in degrees from a line from the focal point of the antenna to the target satellite, and dBi refers to dB relative to an isotropic radiator. This envelope may be exceeded by up to 3 dB in 10% of the range of θ angles from ±7–180°.

(2) In the plane tangent to the GSO arc, for earth stations operating in the conventional Ku-band:

$29-25\log_{10}\theta$	dBi	for $1.5° \le \theta \le 7°$.
8	dBi	for $7° < \theta \le 9.2°$.
$32-25\log_{10}\theta$	dBi	for $9.2° < \theta \le 48°$.
-10	dBi	for $48° < \theta \le 85°$.
0	dBi	for $85° < \theta \le 180°$.

Where θ and dBi are as defined in paragraph (a)(1) above. This envelope may be exceeded by up to 3 dB in 10% of the range of θ angles from ±7–180°.

(3) In the plane tangent to the GSO arc, for earth stations operating in the 28.35–30 GHz or 24.75–25.25 GHz band:

$29-25\log_{10}\theta$	dBi	for $2° \le \theta \le 7°$.
8	dBi	for $7° < \theta \le 9.2°$.

$32-25\log_{10}\theta$	dBi	for $9.2° < \theta \leq 48°$.
0	dBi	for $48° < \theta \leq 180°$.

Where θ and dBi are as defined in paragraph (a)(1) above. This envelope may be exceeded by up to 3 dB in 10% of the range of θ angles from ±7–180°.

(4) In the plane perpendicular to the GSO arc, as defined in § 25.103, for earth stations not operating in the conventional Ku-band, 28.35–30 GHz band, or 24.75–25.25 GHz band:

Outside the main beam, the gain of the antenna shall lie below the envelope defined by:

$32-25\log_{10}\theta$	dBi	for $3° < \theta \leq 48°$.
-10	dBi	for $48° < \theta \leq 180°$.

Where θ and dBi are as defined in paragraph (a)(1) above. This envelope may be exceeded by up to 6 dB in 10% of the range of θ angles from ±3–180°.

(5) In the plane perpendicular to the GSO arc, for earth stations operating in the conventional Ku-band:

Outside the main beam, the gain of the antenna shall lie below the envelope defined by:

$32-25\log_{10}\theta$	dBi	for $3° < \theta \leq 48°$.
-10	dBi	for $48° < \theta \leq 85°$.
0	dBi	for $85° < \theta \leq 180°$.

Where θ and dBi are as defined in paragraph (a)(1) above. This envelope may be exceeded by up to 6 dB in 10% of the range of θ angles from ±3–180°.

(6) In the plane perpendicular to the GSO arc, for earth stations operating in the 28.35–30 GHz band or 24.75–25.25 GHz band:

Outside the main beam, the gain of the antenna shall lie below the envelope defined by:

$32-25\log_{10}\theta$	dBi	for $3.5° < \theta \leq 7°$.
10.9	dBi	for $7° < \theta \leq 9.2°$.
$35-25\log_{10}\theta$	dBi	for $9.2° < \theta \leq 48°$.
3	dBi	for $48° < \theta \leq 180°$.

Where θ and dBi are as defined in paragraph (a)(1) above. This envelope may be exceeded by up to 6 dB in 10% of the range of θ angles from ±3–180°.

(b) Except as provided in paragraph (f) of this section, the off-axis cross-polarization gain of any antenna used for transmission from an FSS earth station, including earth stations providing feeder links for satellite services other than FSS, may not exceed the following limits:

(1) In the plane tangent to the GSO arc, for earth stations not operating in the 28.35–30 GHz band or the 24.75–25.25 GHz band:

$19-25\log_{10}\theta$	dBi	for $1.8° < \theta \leq 7°$.
−2	dBi	for $7° < \theta \leq 9.2°$.

Where θ and dBi are as defined in paragraph (a)(1) above.

(2) In the plane perpendicular to the GSO arc, for earth stations not operating in the 28.35–30 GHz band or the 24.75–25.25 GHz band:

$19-25\log_{10}\theta$	dBi	for $3° < \theta \leq 7°$.
-2	dBi	for $7° < \theta \leq 9.2°$.

Where θ and dBi are as defined in paragraph (a)(1) above.

(3) In the plane perpendicular to the GSO arc, for earth stations operating in the 28.35–30 GHz band or 24.75–25.25 GHz band:

$19–25\log_{10}\theta$	dBi	for $2° < \theta \leq 7°$.
−2	dBi	for $7° < \theta \leq 9.2°$.

Where θ and dBi are as defined in paragraph (a)(1) above.

(c)(1) An earth station licensed for operation with an FSS space station or registered for reception of transmissions from such a space station pursuant to § 25.131(b) and (d) is not entitled to protection from interference from authorized operation of other stations that would not cause harmful interference to that earth station if it were using an antenna with receive-band gain patterns conforming to the levels specified in § 25.209(a) and (b).

(2) A 17/24 GHz BSS telemetry earth station is not entitled to protection from harmful interference from authorized space station operation that would not cause harmful interference to that earth station if it were using an antenna with receive-band gain patterns conforming

to the levels specified in paragraphs (a) and (b) of this section. Receive-only earth stations in the 17/24 GHz BSS are entitled to protection from harmful interference caused by other space stations to the extent indicated in § 25.224.

* * * * *

(h) The gain of any transmitting antenna in a gateway earth station communicating with NGSO FSS satellites in the 10.7–11.7 GHz, 12.75–13.15 GHz, 13.2125–13.25 GHz, 13.8–14.0 GHz, and/or 14.4–14.5 GHz bands must lie below the envelope defined as follows:

$29-25\log_{10}(\theta)$	dBi	for $1° \leq \theta \leq 36°$.
-10	dBi	for $36° \leq \theta \leq 180°$.

Where θ and dBi are as defined in paragraph (a)(1) above. This envelope may be exceeded by up to 3 dB in 10% of the range of θ angles from ±7–180°.

■ 38. Amend § 25.210 by removing and reserving paragraph (a) and revising paragraph (i) to read as follows:

§ 25.210 Technical requirements for space stations.

* * * * *

(i) Space station antennas in the 17/24 GHz Broadcasting Satellite Service must be designed to provide a cross-polarization isolation such that the ratio of the on axis co-polar gain to the cross-polar gain of the antenna in the assigned frequency band shall be at least 25 dB within its primary coverage area.

* * * * *

■ 39. Amend § 25.211 by removing and reserving paragraph (a) and revising paragraphs (b) and (e) to read as follows:

§ 25.211 Analog video transmissions in the Fixed-Satellite Service.

* * * * *

(b) All 4/6 GHz analog video transmissions shall contain an energy dispersal signal at all times with a minimum peak-to-peak bandwidth set at whatever value is necessary to meet the power flux density limits specified in § 25.208(a) and successfully coordinated internationally and accepted by adjacent U.S. satellite operators based on the use of state of the art space and earth station facilities. All transmissions in frequency bands described in § 25.208(b) and (c) shall also contain an energy dispersal signal at all times with a minimum peak-to-peak bandwidth set at whatever value is necessary to meet the power flux density limits specified in § 25.208(b) and (c) and successfully coordinated internationally and accepted by adjacent U.S. satellite operators based on the use of state of the art space and earth station facilities.

* * * * *

(e) Applications for authority for analog video uplink transmission in the 5925–6425 MHz or 14.0–14.5 GHz band that are not eligible for routine processing under paragraph (d) of this section are subject to the requirements of § 25.220.

■ 40. Amend § 25.212 by revising paragraph (c)(1) and paragraphs (d) and (e), and adding paragraph (g) to read as follows:

§ 25.212 Narrowband analog transmissions and digital transmissions in the GSO Fixed Satellite Service.

* * * * *

(c)(1) An earth station that is not subject to licensing under §§ 25.134, 25.222, 25.226, or § 25.227 may be routinely licensed for analog transmissions in the 14.0–14.5 GHz band with bandwidths up to 200 kHz (or up to 1 MHz for command carriers at the band edge) if the equivalent diameter of the transmitting antenna is 1.2 meters or greater, input power spectral density into the antenna will not exceed $-8-10\log_{10}(N)$ dBW/4 kHz, and the applicant certifies conformance with relevant antenna performance standards in § 25.209(a) and (b). ''N'' is the number of earth stations transmitting simultaneously in the same frequencies to the same target satellite. For stations not transmitting simultaneously on common frequencies to the same target satellite, N=1.

* * * * *

(d) An individual earth station that is not subject to licensing under § 25.221 may be routinely licensed for digital transmission in the 5925–6425 MHz band or analog transmission in that band with carrier bandwidths up to 200 kHz (or up to 1 MHz for command carriers at the band edge) if the equivalent diameter of the transmit antenna is 4.5 meters or greater, the applicant certifies conformance with relevant antenna performance standards in § 25.209(a) and (b), and power density into the antenna will not exceed $+0.5-10\log_{10}(N)$ dBW/4 kHz for analog carriers or $-2.7-10\log_{10}(N)$ dBW/4 kHz for digital carriers, where ''N'' is as defined in paragraph (c)(1) of this section.

(e) Applications for authority for fixed earth station operation in the 5925–6425 GHz or 14.0–14.5 GHz band that do not qualify for routine processing under relevant criteria in this section, §§ 25.211, or 25.218 are subject to the requirements in § 25.220.

* * * * *

(g) An earth station not subject to network licensing under § 25.134 may be routinely licensed for digital transmission in the 28.35–28.6 GHz and/or 29.25–30.0 GHz bands if the equivalent diameter of the transmitting antenna is 66 centimeters or greater, input power spectral density into the antenna will not exceed 3.5 dBW/MHz, and the application includes certification pursuant to § 25.132(a)(1) of conformance with the antenna gain performance requirements in § 25.209(a) and (b).

■ 41. Revise § 25.218 to read as follows:

§ 25.218 Off-axis EIRP density envelopes for FSS earth stations transmitting in certain frequency bands.

(a) This section applies to applications for Fixed-Satellite Service earth stations transmitting to geostationary-orbit space stations in the conventional C-band, extended C-band, conventional Ku-band, or extended Ku band, including VSAT applications not meeting routine licensing criteria in § 25.134, with the following exceptions:

(1) ESV, VMES, and ESAA applications and

(2) Applications proposing transmission of analog command signals at a band edge with bandwidths greater than 1 MHz or transmission of any other type of analog signal with bandwidths greater than 200 kHz.

(b) Earth station applications subject to this section may be routinely processed if they meet the applicable off-axis EIRP density envelopes set forth in this section below and include the table required by § 25.115(h).

(c) *Analog earth station operation in the conventional or extended C-band.* (1) In the plane tangent to the GSO arc, as defined in § 25.103:

$29.5-10\log_{10}(N)-25\log_{10}\theta$	dBW/4 kHz	for $1.5° \leq \theta \leq 7°$
$8.5-10\log_{10}(N)$	dBW/4 kHz	for $7° < \theta \leq 9.2°$

$32.5-10\log_{10}(N)-25\log_{10}\theta$	dBW/4 kHz	for $9.2°<\theta\leq48°$
$-9.5-10\log_{10}(N)$	dBW/4 kHz	for $48°<\theta\leq180°$

Where θ is the angle in degrees from a line from the earth station antenna to the assigned location of the target satellite and ''N'' is the number of network earth stations transmitting simultaneously in the same frequencies to the same target satellite. The EIRP density levels specified for θ>7° may be exceeded by up to 3 dB in up to 10% of the range of theta (θ) angles from ±7–180°.

(2) In the plane perpendicular to the GSO arc, as defined in § 25.103:

$32.5-10\log_{10}(N)-25\log_{10}\theta$	dBW/4 kHz	for $3°\leq\theta\leq48°$
$-9.5-10\log_{10}(N)$	dBW/4 kHz	for $48°<\theta\leq180°$

Where θ is as defined in paragraph (c)(1) of this section. These EIRP density levels may be exceeded by up to 6 dB in the region of main reflector spillover energy and in up to 10% of the range of θ angles not included in that region, on each side of the line from the earth station to the target satellite.

(d) *Digital earth station operation in the conventional or extended C-band.* (1) In the plane tangent to the GSO arc:

$26.3-10\log_{10}(N)-25\log_{10}\theta$	dBW/4 kHz	for $1.5°\leq\theta\leq7°$
$5.3-10\log_{10}(N)$	dBW/4 kHz	for $7°<\theta\leq9.2°$
$29.3-10\log_{10}(N)-25\log_{10}\theta$	dBW/4 kHz	for $9.2°<\theta\leq48°$
$-12.7-10\log_{10}(N)$	dBW/4 kHz	for $48°<\theta\leq180°$

Where θ is as defined in paragraph (c)(1) of this section, and N is defined below. The EIRP density levels specified for θ >7° may be exceeded by up to 3 dB in up to 10% of the range of theta (θ) angles from ±7–180°. For stations in networks that allow multiple terminals to transmit simultaneously in shared frequencies with equal on-axis EIRP, ''N'' is the number of network earth stations transmitting simultaneously in the same frequencies to the same target satellite, not counting burst collisions resulting from operation with a contention protocol. N=1 for any station not transmitting simultaneously with others on common frequencies to the same target satellite and stations in networks that permit such simultaneous co-frequency transmission only in contention protocol operation.

(2) In the plane perpendicular to the GSO arc:

$29.3-10\log_{10}(N)-25\log_{10}\theta$	dBW/4 kHz	for $3°\leq\theta\leq48°$
$-12.7-10\log_{10}(N)$	dBW/4 kHz	for $48°<\theta\leq180°$

Where θ is as defined in paragraph (c)(1) of this section, and N is as defined in paragraph (d)(1) of this section. These EIRP density levels may be exceeded by up to 6 dB in the region of main reflector spillover energy and in up to 10% of the range of θ angles not included in that region, on each side of the line from the earth station to the target satellite.

(3) A license application for a network using variable power-density control of earth stations transmitting simultaneously in shared frequencies to the same target satellite may be routinely processed if the applicant demonstrates the following:

(i) Off-axis EIRP density from each station in the network will be kept at least 1 dB below the levels specified in paragraphs (d)(1) and (2) of this section, with the value of N=1.

(ii) Aggregate EIRP density toward any co-frequency space station other than the target satellite not resulting from colliding data bursts transmitted pursuant to a contention protocol will not exceed the limit specified in paragraph (d)(3)(i) above.

(e) *Analog earth station operation in the conventional Ku-band.* (1) In the plane tangent to the GSO arc:

$21-10\log_{10}(N)-25\log_{10}\theta$	dBW/4 kHz	for $1.5°\leq\theta\leq7°$.
$0-10\log_{10}(N)$	dBW/4 kHz	for $7°<\theta\leq9.2°$.
$24-10\log_{10}(N)-25\log_{10}\theta$	dBW/4 kHz	for $9.2°<\theta\leq48°$.
$-18-10\log_{10}(N)$	dBW/4 kHz	for $48°<\theta\leq85°$.
$-8-10\log_{10}(N)$	dBW/4 kHz	for $85°<\theta\leq180°$.

Where θ is as defined in paragraph (c)(1) of this section. The EIRP density levels specified for θ>7° may be exceeded by up to 3 dB in up to 10% of the range of theta (θ) angles from ±7–180°.

(2) In the plane perpendicular to the GSO arc:

$24-10\log_{10}(N)-25\log_{10}\theta$	dBW/4 kHz	for $3°\leq\theta\leq48°$.
$-18-10\log_{10}(N)$	dBW/4 kHz	for $48°<\theta\leq85°$.
$-8-10\log_{10}(N)$	dBW/4 kHz	for $85°<\theta\leq180°$.

Where θ is as defined in paragraph (c)(1) of this section. These EIRP density levels may be exceeded by up to 6 dB in the region of main reflector spillover energy and in up to 10% of the range of θ angles not included in that region, on each side of the line from the earth station to the target satellite.

(f) *Digital earth station operation in the conventional Ku-band.* (1) In the plane tangent to the GSO arc:

$15-10\log_{10}(N)-25\log_{10}\theta$	dBW/4 kHz	for $1.5° \le \theta \le 7°$.
$-6-10\log_{10}(N)$	dBW/4 kHz	for $7° < \theta \le 9.2°$.
$18-10\log_{10}(N)-25\log_{10}\theta$	dBW/4 kHz	for $9.2° < \theta \le 48°$.
$-24-10\log_{10}(N)$	dBW/4 kHz	for $48° < \theta \le 85°$.
$-14-10\log_{10}(N)$	dBW/4 kHz	for $85° < \theta \le 180°$.

Where θ is as defined in paragraph (c)(1) of this section, and N is as defined in paragraph (d)(1) of this section. The EIRP density levels specified for θ>7° may be exceeded by up to 3 dB in up to 10% of the range of theta (θ) angles from ±7–180°.

(2) In the plane perpendicular to the GSO arc:

$18-10\log_{10}(N)-25\log_{10}\theta$	dBW/4 kHz	for $3° \le \theta \le 48°$.
$-24-10\log_{10}(N)$	dBW/4 kHz	for $48° < \theta \le 85°$.
$-14-10\log_{10}(N)$	dBW/4 kHz	for $85° < \theta \le 180°$.

Where θ is as defined in paragraph (c)(1) of this section, and N is as defined in paragraph (d)(1) of this section. These EIRP density levels may be exceeded by up to 6 dB in the region of main reflector spillover energy and in up to 10% of the range of θ angles not included in that region, on each side of the line from the earth station to the target satellite.

(3) A license application for a network using variable power-density control of earth stations transmitting simultaneously in shared frequencies to the same target satellite may be routinely processed if the applicant demonstrates the following:

(i) Off-axis EIRP density from each station in the network will be kept at least 1 dB below the levels specified in paragraphs (f)(1) and f)(2) of this section, with the value of N=1.

(ii) Aggregate EIRP density toward any co-frequency space station other than the target satellite not resulting from colliding data bursts transmitted pursuant to a contention protocol will not exceed the limit specified in paragraph (f)(3)(i) of this section.

(g) *Analog earth station operation in the extended Ku-band.* (1) In the plane tangent to the GSO arc:

$21-10\log_{10}(N)-25\log_{10}\theta$	dBW/4 kHz	for $1.5° \le \theta \le 7°$.
$0-10\log_{10}(N)$	dBW/4 kHz	for $7° < \theta \le 9.2°$.
$24-10\log_{10}(N)-25\log_{10}\theta$	dBW/4 kHz	for $9.2° < \theta \le 48°$.
$-18-10\log_{10}(N)$	dBW/4 kHz	for $48° < \theta \le 180°$.

Where θ is as defined in paragraph (c)(1) of this section, and N is as defined in paragraph (d)(1) of this section. The EIRP density levels specified for θ >7° may be exceeded by up to 3 dB in up to 10% of the range of theta (θ) angles from ±7–180°.

(2) In the plane perpendicular to the GSO arc:

$24-10\log_{10}(N)-25\log_{10}\theta$	dBW/4 kHz	for $3° \le \theta \le 48°$.
$-18-10\log_{10}(N)$	dBW/4 kHz	for $48° < \theta \le 180°$.

Where θ is as defined in paragraph (c)(1) of this section. These EIRP density levels may be exceeded by up to 6 dB in the region of main reflector spillover energy and in up to 10% of the range of θ angles not included in that region, on each side of the line from the earth station to the target satellite.

(h) *Digital earth station operation in the extended Ku-band.* (1) In the plane tangent to the GSO arc:

$15-10\log_{10}(N)-25\log_{10}\theta$	dBW/4 kHz	for $1.5° \le \theta \le 7°$.
$-6-10\log_{10}(N)$	dBW/4 kHz	for $7° < \theta \le 9.2°$.
$18-10\log_{10}(N)-25\log_{10}\theta$	dBW/4 kHz	for $9.2° < \theta \le 48°$.
$-24-10\log_{10}(N)$	dBW/4 kHz	for $48° < \theta \le 180°$.

Where θ is as defined in paragraph (c)(1) of this section, and N is as defined in paragraph (d)(1) of this section. The EIRP density levels specified for θ >7° may be exceeded by up to 3 dB in up to 10% of the range of theta (θ) angles from ±7–180°.

(2) In the plane perpendicular to the GSO arc:

$18-10\log_{10}(N)-25\log_{10}\theta$	dBW/4 kHz	for $3° \le \theta \le 48°$.
$-24-10\log_{10}(N)$	dBW/4 kHz	for $48° < \theta \le 85°$.

Where θ is as defined in paragraph (c)(1) of this section and N is as defined in paragraph (d)(1) of this section. These EIRP density levels may be exceeded by up to 6 dB in the region of main reflector spillover energy and in up to 10% of the range of θ angles not included in that region, on each side of the line from the earth station to the target satellite.

(3) A license application for a network using variable power-density control of earth stations transmitting simultaneously in shared frequencies to the same target satellite may be routinely processed if the applicant demonstrates the following:

(i) Off-axis EIRP density from each station in the network will be kept at least 1 dB below the levels specified in paragraphs (h)(1) and (2) of this section, with the value of N=1.

(ii) Aggregate EIRP density toward any co-frequency space station other than the target satellite not resulting from colliding data bursts transmitted pursuant to a contention protocol will be kept at least 1 dB below the levels specified in paragraphs (h)(1) and (2) of this section, with the value of N=1.

■ 42. Amend § 25.220 by revising paragraphs (a) and (b), removing and reserving paragraph (d)(1)(i), and revising paragraph (d)(2) to read as follows:

§ 25.220 Non-conforming transmit/receive earth station operations.

(a) The requirements in this section apply to applications for, and operation of, earth stations transmitting in the conventional or extended C-band, the conventional or extended Ku-band, or the 20/30 GHz bands that do not qualify for routine licensing under relevant criteria in §§ 25.134, 25.138, 25.211, 25.212, 25.218, 25.221(a)(1) or (3), 25.222(a)(1) or (3), 25.226(a)(1) or (3), or § 25.227(a)(1) or (3).

(b) Applications filed pursuant to this section must include the information required by § 25.115(g)(1).

* * * * *

(d) * * *

(2) The operator of an earth station licensed pursuant to this section must reduce EIRP density toward a subsequently launched two-degree-compliant space station receiving in the same uplink band at a position within 6 degrees of the earth station's target satellite if the non-conforming earth station operation has not been coordinated with the operator of the new satellite. The earth station operator must reduce EIRP density to levels at or within relevant routine limits toward a two-degree-compliant space station receiving in the same uplink band at a position more than 6 degrees away from the target satellite if operation of the co-frequency space station is adversely affected by the non-conforming earth station operation, unless the non-conforming operation is permitted under a coordination agreement with the operator of the co-frequency satellite.

* * * * *

■ 43. Amend § 25.221 by revising paragraphs (a)(1)(i)(A) through (D), paragraphs (a)(2) and (3), the introductory text of paragraphs (b) and (b)(1), removing and reserving paragraphs (b)(1)(i) and (ii), and revising paragraphs (b)(2) and (3) to read as follows:

§ 25.221 Blanket Licensing provisions for Earth Stations on Vessels (ESVs) receiving in the 3700–4200 MHz (space-to-Earth) band and transmitting in the 5925–6425 MHz (Earth-to-space) band, operating with GSO Satellites in the Fixed-Satellite Service.

(a) * * *

(1) * * *

(i) * * *

(A) Off-axis EIRP spectral density emitted in the plane tangent to the GSO arc, as defined in § 25.103, shall not exceed the following values:

26.3-10log(N)-25logθ	dBW/4 kHz	for 1.5° ≤θ≤7°.
5.3-10log(N)	dBW/4 kHz	for 7°<θ≤9.2°.
29.3-10log(N)-25logθ	dBW/4 kHz	for 9.2°<θ≤48°.
-12.7-10log(N)	dBW/4 kHz	for 48°<θ≤180°.

Where theta (θ) is the angle in degrees from a line from the earth station antenna to the assigned orbital location of the target satellite. For stations in networks that allow multiple terminals to transmit simultaneously in shared frequencies with equal on-axis EIRP, ''N'' is the number of network earth stations transmitting simultaneously in the same frequencies to the same target satellite, not counting burst collisions resulting from operation with a contention protocol. N=1 for any station not transmitting simultaneously with others on common frequencies to the same target satellite and stations in networks that permit such simultaneous co-frequency transmission only in contention protocol operation. The EIRP density levels specified for θ > 7° may be exceeded by up to 3 dB in up to 10% of the range of theta (θ) angles from ±7–180°.

(B) In the plane perpendicular to the GSO arc, as defined in § 25.103, EIRP spectral density of co-polarized signals shall not exceed the following values:

29.3-10log(N)-25logθ	dBW/4 kHz	for 3.0°≤θ≤48°.
-12.7-10log(N)	dBW/4 kHz	for 48°<θ≤180°.

Where θ and N are as defined in paragraph (a)(1)(i)(A) of this section. These EIRP density levels may be exceeded by up to 6 dB in the region of main reflector spillover energy and in up to 10% of the range of θ angles not included in that region, on each side of the line from the earth station to the target satellite.

(C) The off-axis EIRP spectral-density of cross-polarized signals shall not exceed the following values in the plane tangent to the GSO arc or in the plane perpendicular to the GSO arc:

16.3-10log(N)-25logθ	dBW/4 kHz	for 1.8°≤θ≤7.0°.
-4.7-10log(N)	dBW/4 kHz	for 7.0°<θ≤9.2°.

Where θ and N are as defined in paragraph (a)(1)(i)(A) of this section.

(D) For non-circular ESV antennas, the major axis of the antenna must be aligned with the plane tangent to the GSO arc to the extent required to meet

the specified off-axis EIRP spectral-density criteria.

* * * * *

(2) The following requirements apply to ESV systems that operate with off-axis EIRP spectral-densities in excess of the levels in paragraph (a)(1)(i) or (a)(3)(i) of this section under licenses granted based on certifications filed pursuant to paragraph (b)(2) of this section.

(i) An ESV or ESV system licensed based on certifications filed pursuant to paragraph (b)(2) of this section must operate in accordance with the off-axis EIRP density specifications provided to the target satellite operator in order to obtain the certifications.

(ii) Any ESV transmitter operating under a license granted based on certifications filed pursuant to paragraph (b)(2) of this section must be self-monitoring and capable of shutting itself off and must cease or reduce emissions within 100 milliseconds after generating off-axis EIRP-density in excess of the specifications supplied to the target satellite operator.

(iii) A system with variable power control of individual ESV transmitters must monitor the aggregate off-axis EIRP density from simultaneously-transmitting ESV transmitters at the system's network control and monitoring center. If simultaneous operation of two or more ESV transmitters causes aggregate off-axis EIRP density to exceed the off-axis EIRP-density specifications supplied to the target satellite operator, the network control and monitoring center must command those transmitters to cease emissions or reduce the aggregate EIRP density to a level at or below those specifications, and the transmitters must comply within 100 milliseconds of receiving the command.

(3) The following requirements apply to an ESV system that uses variable power control of individual earth stations transmitting simultaneously in the same frequencies to the same target satellite, unless the ESV system operates pursuant to paragraph (a)(2) of this section.

(i) Aggregate EIRP density from terminals in the network toward any co-frequency satellite other than the target satellite(s) must be at least 1 dB below the limits defined in paragraph (a)(1)(i) of this section, with the value of N=1.

(ii) Each ESV transmitter must be self-monitoring and capable of shutting itself off and must cease or reduce emissions within 100 milliseconds after generating off-axis EIRP density in excess of the limit in paragraph (a)(3)(i) of this section.

(iii) Aggregate power density from simultaneously-transmitting ESV transmitters must be monitored at the system's network control and monitoring center. If simultaneous operation of two or more ESV transmitters causes aggregate off-axis EIRP density to exceed the off-axis EIRP density limit in paragraph (a)(3)(i) of this section, the network control and monitoring center must command those transmitters to cease emissions or reduce the aggregate EIRP density to a level at or below that limit, and those transmitters must comply within 100 milliseconds of receiving the command.

* * * * *

(b) Applications for ESV operation in the 5925–6425 MHz (Earth-to-space) band to GSO satellites in the Fixed-Satellite Service must include, in addition to the particulars of operation identified on Form 312, and associated Schedule B, applicable technical demonstrations or certifications pursuant to paragraph (b)(1), (b)(2), or (b)(3) of this section and the documentation identified in paragraphs (b)(4) through (b)(6) of this section.

(1) An ESV applicant proposing to implement a transmitter under paragraph (a)(1) of this section must provide the information required by § 25.115(g)(1). The applicant must also specify the value N defined in paragraph (a)(1)(i)(A) of this section. An applicant proposing to implement a transmitter under paragraph (a)(1)(ii)(A) of this section must also provide the certifications identified in paragraph (b)(1)(iii) of this section. An ESV applicant proposing to implement a transmitter under paragraph (a)(1)(ii)(B) of this section must also provide the demonstrations identified in paragraph (b)(1)(iv) of this section.

* * * * *

(2) An applicant proposing to operate with off-axis EIRP density in excess of the levels specified in paragraph (a)(1)(i) or (a)(3)(i) of this section must provide the following in exhibits to its earth station application:

(i) Off-axis EIRP density data pursuant to § 25.115(g)(1):

(ii) The certifications required by § 25.220(d);

(iii) A detailed showing that each ESV transmitter in the system will automatically cease or reduce emissions within 100 milliseconds after generating EIRP density exceeding specifications provided to the target satellite operator;

(iv) A detailed showing that the aggregate power density from simultaneously-transmitting ESV transmitters will be monitored at the system's network control and monitoring center; that if simultaneous operation of two or more ESV transmitters causes the aggregate off-axis EIRP density to exceed the off-axis EIRP density specifications supplied to the target satellite operator, the network control and monitoring center will command those transmitters to cease emissions or reduce the aggregate EIRP density to a level at or below those specifications; and that those transmitters will comply within 100 milliseconds of receiving the command; and

(v) A certification that the ESV system will operate in compliance with the power limits in § 25.204(h).

(3) An applicant proposing to implement an ESV system subject to paragraph (a)(3) of this section must provide the following information in exhibits to its earth station application:

(i) Off-axis EIRP density data pursuant to § 25.115(g)(1);

(ii) A detailed showing of the measures that will be employed to maintain aggregate EIRP density at or below the limit in paragraph (a)(3)(i) of this section;

(iii) A detailed showing that each ESV terminal will automatically cease or reduce emissions within 100 milliseconds after generating off-axis EIRP density exceeding the limit in paragraph (a)(3)(i) of this section;

(iv) A detailed showing that the aggregate power density from simultaneously-transmitting ESV transmitters will be monitored at the system's network control and monitoring center; that if simultaneous operation of two or more ESV transmitters causes aggregate off-axis EIRP density to exceed the off-axis EIRP density limit in paragraph (a)(3)(i) of this section, the network control and monitoring center will command those transmitters to cease emissions or reduce the aggregate EIRP density to a level at or below that limit; and that those transmitters will comply within 100 milliseconds of receiving the command; and

(v) Certification that the ESV system will operate in compliance with the power limits in § 25.204(h).

* * * * *

■ 44. Amend § 25.222 by revising paragraphs (a)(1)(i)(A) through (D), paragraphs (a)(2) and (3), the introductory text of paragraphs (b) and (b)(1), removing and reserving paragraphs (b)(1)(i) and (ii), and revising paragraphs (b)(2) and (3) to read as follows:

§ 25.222 Blanket Licensing provisions for Earth Stations on Vessels (ESVs) receiving in the 10.95–11.2 GHz (space-to-Earth), 11.45–11.7 GHz (space-to-Earth), 11.7–12.2 GHz (space-to-Earth) bands and transmitting in the 14.0–14.5 GHz (Earth-to-space) band, operating with GSO Satellites in the Fixed-Satellite Service.

(a) * * *

(1) * * *

(i) * * *

(A) Off-axis EIRP spectral density emitted in the plane tangent to the GSO arc, as defined in § 25.103, shall not exceed the following values:

15-10log(N)-25logθ	dBW/4 kHz	for 1.5°≤θ≤7°.
-6-10log(N)	dBW/4 kHz	for 7°<θ≤9.2°.
18-10log(N)-25logθ	dBW/4 kHz	for 9.2°<θ≤48°.
-24-10log(N)	dBW/4 kHz	for 48°<θ≤85°.
-14-10log(N)	dBW/4 kHz	for 85°<θ≤180°.

Where theta (θ) is the angle in degrees from a line from the earth station antenna to the assigned orbital location of the target satellite. For stations in networks that allow multiple terminals to transmit simultaneously in shared frequencies with equal on-axis EIRP, ''N'' is the number of network earth stations transmitting simultaneously in the same frequencies to the same target satellite, not counting burst collisions resulting from operation with a contention protocol. N=1 for any station not transmitting simultaneously with others on common frequencies to the same target satellite and stations in networks that permit such simultaneous co-frequency transmission only in contention protocol operation. The EIRP density levels specified for θ > 7° may be exceeded by up to 3 dB in up to 10% of the range of theta (θ) angles from ±7–180°.

(B) The off-axis EIRP density of co-polarized signals shall not exceed the following values in the plane perpendicular to the GSO arc, as defined in § 25.103:

18-10log(N)-25logθ	dBW/4 kHz	for 3.0°≤θ≤48°.
-24-10log(N)	dBW/4 kHz	for 48°<θ≤85°.
-14-10log(N)	dBW/4 kHz	for 85°<θ≤180°.

Where θ and N are as defined in paragraph (a)(1)(i)(A) of this section. These EIRP density levels may be exceeded by up to 6 dB in the region of main reflector spillover energy and in up to 10% of the range of θ angles not included in that region, on each side of the line from the earth station to the target satellite.

(C) The off-axis EIRP density of cross-polarized signals shall not exceed the following values in the plane tangent to the GSO arc or in the plane perpendicular to the GSO arc:

5-10log(N)-25logθ	dBW/4 kHz	for 1.8°≤θ≤7.0°.
-16-10log(N)	dBW/4 kHz	for 7.0°<θ≤9.2°.

Where θ and N are as defined in paragraph (a)(1)(i)(A) of this section.

(D) For non-circular ESV antennas, the major axis of the antenna must be aligned with the plane tangent to the GSO arc to the extent required to meet the specified off-axis EIRP density criteria.

* * * * *

(2) The following requirements apply to ESV systems that operate with off-axis EIRP spectral-densities in excess of the levels in paragraph (a)(1)(i) or (a)(3)(i) of this section under licenses granted based on certifications filed pursuant to paragraph (b)(2) of this section.

(i) An ESV or ESV system licensed based on certifications filed pursuant to paragraph (b)(2) of this section must operate in accordance with the off-axis EIRP density specifications provided to the target satellite operator in order to obtain the certifications.

(ii) Any ESV transmitter operating under a license granted based on certifications filed pursuant to paragraph (b)(2) of this section must be self-monitoring and capable of shutting itself off and must cease or reduce emissions within 100 milliseconds after generating off-axis EIRP-density in excess of the specifications supplied to the target satellite operator.

(iii) A system with variable power control of individual ESV transmitters must monitor the aggregate off-axis EIRP density from simultaneously-transmitting ESV transmitters at the system's network control and monitoring center. If simultaneous operation of two or more ESV transmitters causes aggregate off-axis EIRP density to exceed the off-axis EIRP-density specifications supplied to the target satellite operator, the network control and monitoring center must command those transmitters to cease emissions or reduce the aggregate EIRP density to a level at or below those specifications, and the transmitters must comply within 100 milliseconds of receiving the command.

(3) The following requirements apply to an ESV system that uses variable power control of individual earth stations transmitting simultaneously in the same frequencies to the same target satellite, unless the ESV system operates pursuant to paragraph (a)(2) of this section.

(i) Aggregate EIRP density from terminals in the network toward any co-frequency satellite other than the target satellite(s) must be at least 1 dB below the limits defined in paragraph (a)(1)(i) of this section, with the value of N = 1.

(ii) Each ESV transmitter must be self-monitoring and capable of shutting itself off and must cease or reduce emissions within 100 milliseconds after generating off-axis EIRP density in excess of the limit in paragraph (a)(3)(i) of this section.

(iii) Aggregate power density from simultaneously-transmitting ESV transmitters must be monitored at the

system's network control and monitoring center. If simultaneous operation of two or more ESV transmitters causes aggregate off-axis EIRP density to exceed the off-axis EIRP density limit in paragraph (a)(3)(i) of this section, the network control and monitoring center must command those transmitters to cease emissions or reduce the aggregate EIRP density to a level at or below that limit, and those transmitters must comply within 100 milliseconds of receiving the command.

* * * * *

(b) Applications for ESV operation in the 14.0–14.5 GHz (Earth-to-space) band to GSO satellites in the Fixed-Satellite Service must include, in addition to the particulars of operation identified on Form 312, and associated Schedule B, applicable technical demonstrations or certifications pursuant to paragraph (b)(1), (b)(2), or (b)(3) of this section and the documentation identified in paragraphs (b)(4) through (6) of this section.

(1) An ESV applicant proposing to implement a transmitter under paragraph (a)(1) of this section must provide the information required by § 25.115(g)(1). The applicant must also specify the value N defined in paragraph (a)(1)(i)(A) of this section. An applicant proposing to implement a transmitter under paragraph (a)(1)(ii)(A) of this section must also provide the certifications identified in paragraph (b)(1)(iii) of this section. An ESV applicant proposing to implement a transmitter under paragraph (a)(1)(ii)(B) of this section must also provide the demonstrations identified in paragraph (b)(1)(iv) of this section.

* * * * *

(2) An applicant proposing to operate with off-axis EIRP density in excess of the levels in paragraph (a)(1)(i) or (a)(3)(i) of this section must provide the following in exhibits to its earth station application:

(i) Off-axis EIRP density data pursuant to § 25.115(g)(1);

(ii) The certifications required by § 25.220(d);

(iii) A detailed showing that each ESV transmitter in the system will automatically cease or reduce emissions within 100 milliseconds after generating EIRP density exceeding specifications provided to the target satellite operator; and

(iv) A detailed showing that the aggregate power density from simultaneously transmitting ESV transmitters will be monitored at the system's network control and monitoring center; that if simultaneous operation of two or more ESV transmitters causes the aggregate off-axis EIRP density to exceed the off-axis EIRP density specifications supplied to the target satellite operator, the network control and monitoring center will command those transmitters to cease emissions or reduce the aggregate EIRP density to a level at or below those specifications; and that those transmitters will comply within 100 milliseconds of receiving the command.

(3) An applicant proposing to implement an ESV system subject to paragraph (a)(3) of this section must provide the following information in exhibits to its earth station application:

(i) Off-axis EIRP density data pursuant to § 25.115(g)(1);

(ii) A detailed showing of the measures that will be employed to maintain aggregate EIRP density at or below the limit in paragraph (a)(3)(i) of this section;

(iii) A detailed showing that each ESV terminal will automatically cease or reduce emissions within 100 milliseconds after generating off-axis EIRP density exceeding the limit in paragraph (a)(3)(i) of this section; and

(iv) A detailed showing that the aggregate power density from simultaneously-transmitting ESV transmitters will be monitored at the system's network control and monitoring center; that if simultaneous operation of two or more ESV transmitters causes aggregate off-axis EIRP density to exceed the off-axis EIRP density limit in paragraph (a)(3)(i) of this section, the network control and monitoring center will command those transmitters to cease emissions or reduce the aggregate EIRP density to a level at or below that limit; and that those transmitters will comply within 100 milliseconds of receiving the command.

* * * * *

■ 45. Amend § 25.223 by revising paragraphs (b), (c), and (d) to read as follows:

§ 25.223 Alternative licensing rules for feeder-link earth stations in the 17/24 GHz BSS.

* * * * *

(b) Applications for earth station licenses in the 24.75–25.25 GHz portion of 17/24 GHz BSS may be routinely processed if they meet the following requirements:

(1) The EIRP density of co-polarized signals shall not exceed the following values in the plane tangent to the GSO arc, as defined in § 25.103, under clear sky conditions:

32.5-25log(θ)	dBW/MHz	for 2°≤θ≤7°.
11.4	dBW/MHz	for 7°≤θ≤9.2°.
35.5-25log(θ)	dBW/MHz	for 9.2°≤θ≤48°.
3.5	dBW/MHz	for 48°≤θ≤180°.

Where θ is the angle in degrees from a line from the earth station antenna to the assigned orbital location of the target satellite.

(2) The EIRP density of co-polarized signals shall not exceed the following values under clear sky conditions in the plane perpendicular to the GSO arc, as defined in § 25.103:

35.-25log(θ)	dBW/MHz	for 2°≤θ≤7°.
14.4	dBW/MHz	for 7°≤θ≤9.2°.
38.5-25log(θ)	dBW/MHz	for 9.2°≤θ≤48°.
6.5	dBW/MHz	for 48°≤θ≤180°

Where θ is as defined in paragraph (b)(1) of this section.

(3) The EIRP density levels specified in paragraphs (a)(1) and (2) of this section may be exceeded by up to 3 dB for values of θ>10°, in 10% of the range of theta (θ) angles from 10°–180° on each side of the line from the earth station to the target satellite.

(4) The EIRP density of cross-polarized signals shall not exceed the following values in the plane tangent to the GSO arc or in the plane

perpendicular to the GSO arc, under clear sky conditions:

22.5-25log(θ)	dBW/MHz	for 2°≤θ≤7°.
1.4	dBW/MHz	for 7°≤θ≤9.2°.

Where θ is as defined in paragraph (b)(1) of this section.

(c) An applicant proposing levels in excess of those specified in paragraph (b) of this section must certify that potentially affected parties acknowledge and do not object to the use of the applicant's higher EIRP densities.

(1) For proposed non-conforming EIRP density levels up to 3 dB in excess of the limits defined in paragraph (b) of this section, potentially affected parties are operators of co-frequency U.S.-authorized 17/24 GHz BSS space stations at angular separations of up to ±6° from the proposed satellite points of communication. For proposed EIRP density levels more than 3 dB but not more than 6 dB in excess of the limits defined in paragraph (b) of this section, potentially affected parties are operators of co-frequency U.S.-authorized space stations up to ±10° from the proposed satellite points of communication.

(2) Notwithstanding paragraph (c)(1) of this section, an applicant need not certify that the operator of a co-frequency space station consents to proposed non-conforming operation if EIRP density from the proposed earth station will not exceed the levels specified in paragraph (b) toward any position in the geostationary arc within 1 degree of the assigned orbital location of the co-frequency space station.

(3) Power density levels more than 6 dB in excess of the limits defined in paragraph (b) of this section will not be permitted.

(d)(1) The operator of an earth station licensed pursuant to paragraph (c) of this section shall bear the burden of coordinating with the operator of a co-frequency space station subsequently licensed by the Commission for operation at an orbital location 10 degrees or less from the earth station's target satellite if the co-frequency space station's reception of conforming uplink transmissions is, or would be, adversely affected by the earth station's non-conforming operation. If no agreement is reached, the earth station operator must reduce EIRP density toward that co-frequency space station to a level in conformance with the envelopes specified in paragraph (b) of this section.

(2) The operator of an earth station licensed pursuant to paragraph (c)(1) or (c)(2) of this section must reduce EIRP density to levels at or within those specified in paragraph (b) toward a U.S.-licensed space station receiving in the same uplink band at a position more than 6 or 10 degrees away from the earth station's target satellite if the co-frequency space station's reception of conforming uplink transmissions is adversely affected by the non-conforming earth station operation, unless the non-conforming operation is permitted under a coordination agreement with the operator of the co-frequency space station.

* * * * *

■ 46. Amend § 25.226 by revising paragraphs (a)(1)(i)(A) through (D), paragraphs (a)(2) and (3), paragraphs (b) and (b)(1) introductory text, removing and reserving paragraphs (b)(1)(i) and (ii), and revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 25.226 Blanket Licensing provisions for domestic, U.S. Vehicle-Mounted Earth Stations (VMESs) receiving in the 10.95–11.2 GHz (space-to-Earth), 11.45–11.7 GHz (space-to-Earth), and 11.7–12.2 GHz (space-to-Earth) bands and transmitting in the 14.0–14.5 GHz (Earth-to-space) band, operating with Geostationary Satellites in the Fixed-Satellite Service.

(a) * * *

(1) * * *

(i) * * *

(A) Off-axis EIRP spectral density emitted in the plane tangent to the GSO arc, as defined in § 25.103, shall not exceed the following values:

15-10log(N)-25logθ	dBW/4 kHz	for 1.5°≤θ≤7°.
-6-10log(N)	dBW/4 kHz	for 7°<θ≤9.2°.
18-10log(N)-25logθ	dBW/4 kHz	for 9.2°<θ≤48°.
-24-10log(N)	dBW/4 kHz	for 48°<θ≤85°.
-14-10log(N)	dBW/4 kHz	for 85°<θ≤180°.

Where theta (θ) is the angle in degrees from a line from the earth station antenna to the assigned orbital location of the target satellite. For stations in networks that allow multiple terminals to transmit simultaneously in shared frequencies with equal on-axis EIRP, ''N'' is the number of network earth stations transmitting simultaneously in the same frequencies to the same target satellite, not counting burst collisions resulting from operation with a contention protocol. N=1 for any station not transmitting simultaneously with others on common frequencies to the same target satellite and stations in networks that permit such simultaneous co-frequency transmission only in contention protocol operation. The EIRP density levels specified for θ>7° may be exceeded by up to 3 dB in up to 10% of the range of theta (θ) angles from ±7–180°.

(B) The off-axis EIRP spectral density of co-polarized signals shall not exceed the following values in the plane perpendicular to the GSO arc, as defined in § 25.103:

18-10log(N)-25logθ	dBW/4 kHz	for 3.0°≤θ≤48°.
-24-10log(N)	dBW/4 kHz	for 48°<θ≤85°.
-14-10log(N)	dBW/4 kHz	for 85°<θ≤180°.

Where θ and N are as defined in paragraph (a)(1)(i)(A) of this section. These EIRP density levels may be exceeded by up to 6 dB in the region of main reflector spillover energy and in up to 10% of the range of θ angles not included in that region, on each side of the line from the earth station to the target satellite.

(C) The EIRP density of cross-polarized signals shall not exceed the following values in the plane tangent to the GSO arc or in the plane perpendicular to the GSO arc:

5-10log(N)-25logθ	dBW/4 kHz	for 1.8°≤θ≤7.0°.
-16-10log(N)	dBW/4 kHz	for 7.0°<θ≤9.2°.

Where θ and N are as defined in paragraph (a)(1)(i)(A) of this section.

(D) For non-circular VMES antennas, the major axis of the antenna must be aligned with the plane tangent to the GSO arc to the extent required to meet the specified off-axis EIRP spectral density criteria.

* * * * *

(2) The following requirements apply to VMES systems that operate with off-axis EIRP spectral-densities in excess of the levels in paragraph (a)(1)(i) or (a)(3)(i) of this section under licenses granted based on certifications filed pursuant to paragraph (b)(2) of this section.

(i) A VMES or VMES system licensed based on certifications filed pursuant to paragraph (b)(2) of this section must operate in accordance with the off-axis EIRP density specifications provided to the target satellite operator in order to obtain the certifications.

(ii) Any VMES transmitter operating under a license granted based on certifications filed pursuant to paragraph (b)(2) of this section must be self-monitoring and capable of shutting itself off and must cease or reduce emissions within 100 milliseconds after generating off-axis EIRP-density in excess of the specifications supplied to the target satellite operator.

(iii) A system with variable power control of individual VMES transmitters must monitor the aggregate off-axis EIRP density from simultaneously-transmitting VMES transmitters at the system's network control and monitoring center. If simultaneous operation of two or more VMES transmitters causes aggregate off-axis EIRP density to exceed the off-axis EIRP density specifications supplied to the target satellite operator, the network control and monitoring center must command those transmitters to cease emissions or reduce the aggregate EIRP density to a level at or below those specifications and the transmitters must comply within 100 milliseconds of receiving the command.

(3) The following requirements apply to a VMES system that uses variable power control of individual VMES earth stations transmitting simultaneously in the same frequencies to the same target satellite, unless the system operates pursuant to paragraph (a)(2) of this section.

(i) Aggregate EIRP density from terminals in the network toward any co-frequency satellite other than the target satellite(s) must be at least 1 dB below the limits defined in paragraph (a)(1)(i) of this section, with the value of N=1.

(ii) Each VMES transmitter must be self-monitoring and capable of shutting itself off and must cease or reduce emissions within 100 milliseconds after generating off-axis EIRP density in excess of the limit in paragraph (a)(3)(i) of this section.

(iii) Aggregate power density from simultaneously-transmitting VMES transmitters must be monitored at the system's network control and monitoring center. If simultaneous operation of two or more transmitters in a VMES network causes aggregate off-axis EIRP density to exceed the off-axis EIRP density limit in paragraph (a)(3)(i) of this section, the network control and monitoring center must command those transmitters to cease emissions or reduce the aggregate EIRP density to a level at or below that limit, and those transmitters must comply within 100 milliseconds of receiving the command.

* * * * *

(b) Applications for VMES operation in the 14.0–14.5 GHz (Earth-to-space) band to GSO satellites in the Fixed-Satellite Service must include, in addition to the particulars of operation identified on Form 312, and associated Schedule B, applicable technical demonstrations pursuant to paragraph (b)(1), (b)(2), or (b)(3) of this section and the documentation identified in paragraphs (b)(4) through (b)(8) of this section.

(1) A VMES applicant proposing to implement a transmitter under paragraph (a)(1) of this section must provide the information required by § 25.115(g)(1). The applicant must also specify the value N defined in paragraph (a)(1)(i)(A) of this section. An applicant proposing to implement a transmitter under paragraph (a)(1)(ii)(A) of this section must also provide the certifications identified in paragraph (b)(1)(iii) of this section. An applicant proposing to implement a transmitter under paragraph (a)(1)(ii)(B) of this section must also provide the demonstrations identified in paragraph (b)(1)(iv) of this section.

* * * * *

(2) An applicant proposing to operate with off-axis EIRP density in excess of the levels in paragraph (a)(1)(i) or (a)(3)(i) of this section must provide the following in exhibits to its earth station application:

(i) Off-axis EIRP density data pursuant to § 25.115(g)(1);

(ii) The certifications required by § 25.220(d);

(iii) A detailed showing that each VMES transmitter in the system will automatically cease or reduce emissions within 100 milliseconds after generating EIRP density exceeding specifications provided to the target satellite operator; and

(iv) A detailed showing that the aggregate power density from simultaneously-transmitting VMES transmitters will be monitored at the system's network control and monitoring center; that if simultaneous operation of two or more VMES transmitters causes the aggregate off-axis EIRP density to exceed the off-axis EIRP density specifications supplied to the target satellite operator, the network control and monitoring center will command those transmitters to cease emissions or reduce the aggregate EIRP density to a level at or below those specifications; and that those transmitters will comply within 100 milliseconds of receiving the command.

(3) An applicant proposing to implement a VMES system subject to paragraph (a)(3) of this section must provide the following information in exhibits to its earth station application:

(i) Off-axis EIRP density data pursuant to § 25.115(g)(1);

(ii) A detailed showing of the measures that will be employed to maintain aggregate EIRP density at or below the limit in paragraph (a)(3)(i) of this section;

(iii) A detailed showing that each VMES terminal will automatically cease or reduce emissions within 100 milliseconds after generating off-axis EIRP density exceeding the limit in paragraph (a)(3)(i) of this section; and

(iv) A detailed showing that the aggregate power density from simultaneously-transmitting ESV transmitters will be monitored at the

system's network control and monitoring center; that if simultaneous operation of two or more transmitters in the VMES network causes aggregate off-axis EIRP density to exceed the off-axis EIRP density limit in paragraph (a)(3)(i) of this section, the network control and monitoring center will command those transmitters to cease emissions or reduce the aggregate EIRP density to a level at or below that limit; and that those transmitters will comply within 100 milliseconds of receiving the command.

* * * * *

■ 47. Amend § 25.227 by revising paragraphs (a)(1)(i)(A) through (C), paragraphs (a)(2) and (3), paragraphs (b) and (b)(1) introductory text, removing and reserving paragraphs (b)(1)(i) and (ii), and revising paragraphs (b)(2) and (3) to read as follows:

* * * * *

§ 25.227 Blanket licensing provisions for Earth Stations Aboard Aircraft (ESAAs) receiving in the 10.95–11.2 GHz (space-to-Earth), 11.45–11.7 GHz (space-to-Earth), and 11.7–12.2 GHz (space-to-Earth) frequency bands and transmitting in the 14.0–14.5 GHz (Earth-to-space) frequency band, operating with Geostationary Satellites in the Fixed-Satellite Service.

(a) * * *

(1) * * *

(i) * * *

(A) EIRP spectral density emitted in the plane tangent to the GSO arc, as defined in § 25.103, must not exceed the following values:

$15-10\log_{10}(N)-25\log_{10}\theta$	dBW/4 kHz	for $1.5° \le \theta \le 7°$.
$-6-10\log_{10}(N)$	dBW/4 kHz	for $7° < \theta \le 9.2°$.
$18-10\log_{10}(N)-25\log_{10}\theta$	dBW/4 kHz	for $9.2° < \theta \le 48°$.
$-24-10\log_{10}(N)$	dBW/4 kHz	for $48° < \theta \le 85°$.
$-14-10\log_{10}(N)$	dBW/4 kHz	for $85° < \theta \le 180°$.

Where theta (θ) is the angle in degrees from a line from the earth station's antenna to the assigned orbital location of the target satellite. For stations in networks that allow multiple terminals to transmit simultaneously in shared frequencies with equal on-axis EIRP, ''N'' is the number of network earth stations transmitting simultaneously in the same frequencies to the same target satellite, not counting burst collisions resulting from operation with a contention protocol. N=1 for any station not transmitting simultaneously with others on common frequencies to the same target satellite and stations in networks that permit such simultaneous co-frequency transmission only in contention protocol operation. The EIRP density levels specified for $\theta > 7°$ may be exceeded by up to 3 dB in up to 10% of the range of theta (θ) angles from ±7–180°.

(B) The EIRP spectral density of co-polarized signals must not exceed the following values in the plane perpendicular to the GSO arc, as defined in § 25.103:

$18-10\log(N)-25\log\theta$	dBW/4 kHz	for $3.0° \le \theta \le 48°$.
$-24-10\log(N)$	dBW/4 kHz	for $48° < \theta \le 85°$.
$-14-10\log(N)$	dBW/4 kHz	for $85° < \theta \le 180°$.

Where θ and N are as defined in paragraph (a)(1)(i)(A) of this section. These EIRP density levels may be exceeded by up to 6 dB in the region of main reflector spillover energy and in up to 10% of the range of θ angles not included in that region, on each side of the line from the earth station to the target satellite.

(C) The off-axis EIRP spectral-density of cross-polarized signals must not exceed the following values in the plane tangent to the GSO arc or in the plane perpendicular to the GSO arc:

$5-10\log_{10}(N)-25\log_{10}\theta$	dBW/4 kHz	for $1.8° < \theta \le 7°$.
$-16-10\log_{10}(N)$	dBW/4 kHz	for $7° < \theta \le 9.2°$.

Where θ and N are as defined in paragraph (a)(1)(i)(A) of this section.

* * * * *

(2) The following requirements apply to ESAA systems that operate with off-axis EIRP spectral-densities in excess of the levels in paragraph (a)(1)(i) or (a)(3)(i) of this section under licenses granted based on certifications filed pursuant to paragraph (b)(2) of this section.

(i) An ESAA or ESAA system licensed based on certifications filed pursuant to paragraph (b)(2) of this section must operate in accordance with the off-axis EIRP density specifications provided to the target satellite operator in order to obtain the certifications.

(ii) Any ESAA transmitter operating under a license granted based on certifications filed pursuant to paragraph (b)(2) of this section must be self-monitoring and capable of shutting itself off and must cease or reduce emissions within 100 milliseconds after generating off-axis EIRP-density in excess of the specifications supplied to the target satellite operator.

(iii) A system with variable power control of individual ESAA transmitters must monitor the aggregate off-axis EIRP density from simultaneously-transmitting ESAA transmitters at the system's network control and monitoring center. If simultaneous operation of two or more ESAA transmitters causes aggregate off-axis EIRP density to exceed the off-axis EIRP density specifications supplied to the target satellite operator, the network control and monitoring center must command those transmitters to cease emissions or reduce the aggregate EIRP density to a level at or below those specifications, and the transmitters must comply within 100 milliseconds of receiving the command.

(3) The following requirements apply to an ESAA system that uses variable power-density control of individual ESAA earth stations transmitting simultaneously in the same frequencies to the same target satellite, unless the system operates pursuant to paragraph (a)(2) of this section.

(i) Aggregate EIRP density from ESAA terminals toward any co-frequency satellite other than the target satellite(s) must be at least 1 dB below the limits specified in paragraph (a)(1)(i) of this section, with the value of N=1.

(ii) Each ESAA transmitter must be self-monitoring and capable of shutting itself off and must cease or reduce emissions within 100 milliseconds after generating off-axis EIRP density in excess of the limit in paragraph (a)(3)(i) of this section.

(iii) A system with variable power control of individual ESAA transmitters must monitor aggregate power density from simultaneously-transmitting ESAA transmitters at the network control and monitoring center. If simultaneous operation of two or more transmitters causes aggregate off-axis EIRP density to exceed the off-axis EIRP density limit in paragraph (a)(3)(i) of this section, the network control and monitoring center must command those transmitters to cease emissions or reduce the aggregate EIRP density to a level at or below that limit, and those transmitters must comply within 100 milliseconds of receiving the command.

* * * * *

(b) Applications for ESAA operation in the 14.0–14.5 GHz (Earth-to-space) band to GSO satellites in the Fixed-Satellite Service shall include, in addition to the particulars of operation identified on Form 312, and associated Schedule B, the applicable technical demonstrations in paragraphs (b)(1), (b)(2), or (b)(3), and the documentation identified in paragraphs (b)(4) through (b)(8) of this section.

(1) An ESAA applicant proposing to implement a transmitter under paragraph (a)(1) of this section must provide the information required by § 25.115(g)(1). The applicant must also specify the value N defined in paragraph (a)(1)(i)(A) of this section. An applicant proposing to implement a transmitter under paragraph (a)(1)(ii)(A) of this section must also provide the certifications identified in paragraph (b)(1)(iii) of this section. An applicant proposing to implement a transmitter under paragraph (a)(1)(ii)(B) of this section must also provide the demonstrations identified in paragraph (b)(1)(iv) of this section.

* * * * *

(2) An ESAA applicant proposing to operate with off-axis EIRP density in excess of the levels in paragraph (a)(1)(i) or (a)(3)(i) of this section must provide the following in exhibits to its earth station application:

(i) Off-axis EIRP density data pursuant to § 25.115(g)(1);

(ii) The certifications required by § 25.220(d); and

(iii) A detailed showing that each ESAA transmitter in the system will automatically cease or reduce emissions within 100 milliseconds after generating EIRP density exceeding specifications provided to the target satellite operator; and

(iv) A detailed showing that the aggregate power density from simultaneously-transmitting ESAA transmitters will be monitored at the system's network control and monitoring center; that if simultaneous operation of two or more ESAA transmitters causes the aggregate off-axis EIRP density to exceed the off-axis EIRP density specifications supplied to the target satellite operator, the network control and monitoring center will command those transmitters to cease emissions or reduce the aggregate EIRP density to a level at or below those specifications; and that those transmitters will comply within 100 milliseconds of receiving the command.

(3) An applicant proposing to implement an ESAA system subject to paragraph (a)(3) of this section must provide the following information in exhibits to its earth station application:

(i) Off-axis EIRP density data pursuant to § 25.115(g)(1);

(ii) A detailed showing of the measures that will be employed to maintain aggregate EIRP density at or below the limit in paragraph (a)(3)(i) of this section;

(iii) A detailed showing that each ESAA terminal will automatically cease or reduce emissions within 100 milliseconds after generating off-axis EIRP density exceeding the limit in paragraph (a)(3)(i) of this section; and

(iv) A detailed showing that the aggregate power density from simultaneously-transmitting ESAA transmitters will be monitored at the system's network control and monitoring center; that if simultaneous operation of two or more transmitters in the ESAA network causes aggregate off-axis EIRP density to exceed the off-axis density limit in paragraph (a)(3)(i) of this section, the network control and monitoring center will command those transmitters to cease emissions or reduce the aggregate EIRP density to a level at or below that limit; and that those transmitters will comply within 100 milliseconds of receiving the command.

* * * * *

■ 48. Amend § 25.258 by revising the section heading and the first sentence in paragraph (b) to read as follows:

§ 25.258 Sharing between NGSO MSS feeder link stations and GSO FSS services in the 29.25–29.5 GHz Band.

* * * * *

(b) Licensed GSO FSS earth stations in the vicinity of operational or planned NGSO MSS feeder link earth station complexes shall, to the maximum extent possible, operate with frequency/polarization selections that will minimize unacceptable interference with reception of GSO FSS and NGSO MSS uplink transmissions in the 29.25–29.5 GHz band. * * *

■ 49. Amend § 25.264 by revising paragraph (a) introductory text and paragraph (a)(5), adding paragraph (a)(6), and revising paragraph (b) introductory text, the second sentence in paragraph (b)(1), paragraph (b)(2)(ii), the first sentence in paragraph (b)(3), the first sentence in paragraph (c), the first sentence in paragraph (d) introductory text, and the first two sentences in paragraph (d)(1)(ii) to read as follows:

§ 25.264 Requirements to facilitate reverse-band operation in the 17.3–17.8 GHz band of 17/24 GHz Broadcasting-Satellite Service and Direct Broadcast Satellite Service space stations.

(a) Each 17/24 GHz BSS space station applicant or licensee must submit a series of tables or graphs containing predicted off-axis gain data for each antenna that will transmit in the 17.3–17.8 GHz frequency band, in accordance with the following specifications. Using a Cartesian coordinate system wherein the X axis is tangent to the geostationary orbital arc with the positive direction pointing east, *i.e.,* in the direction of travel of the satellite; the Y axis is parallel to a line passing through the geographic north and south poles of the Earth, with the positive direction pointing south; and the Z axis passes through the satellite and the center of the Earth, with the positive direction pointing toward the Earth, the applicant or licensee must provide the predicted transmitting antenna off-axis antenna gain information: * * *

* * * * *

(5) Over a greater angular measurement range, if necessary, to account for any planned spacecraft orientation bias or change in operating orientation relative to the reference coordinate system. The applicant or licensee must state the reasons for including such additional information.

(6) The predictive gain information must be submitted to the Commission when a license application is filed for a 17/24 GHz BSS space station or within 60 days after completion of critical design review for the space station, whichever occurs later.

(b) A 17/24 GHz BSS space station applicant or licensee must submit power flux density (pfd) calculations based on the predicted gain data submitted in accordance with paragraph (a) of this section, as follows:

(1) * * * In this section, the term prior-filed U.S. DBS space station refers to any co-frequency Direct Broadcast Satellite service space station for which an application was filed with the Commission, or an authorization was granted by the Commission, prior to the filing of the information and certifications required by paragraphs (a) and (b) of this section. * * *

(2) * * *

(ii) Indicate the extent to which the calculated pfd of the 17/24 GHz space station's transmissions in the 17.3–17.8 GHz band exceed the threshold pfd level of −117 dBW/m²/100 kHz at those prior-filed U.S. DBS space station locations.

(3) If the calculated pfd exceeds the threshold level of −117 dBW/m²/100 kHz at the location of any prior-filed U.S. DBS space station, the applicant or licensee must also provide with the pfd calculations a certification that all affected DBS operators acknowledge and do not object to such higher off-axis pfd levels. * * *

(4) The information and any certification required by paragraph (b) of this section must be submitted to the Commission when a license application is filed for a 17/24 GHz BSS space station or within 60 days after completion of critical design review for the space station, whichever occurs later. Otherwise, such information and certifications must be submitted to the Commission within 24 months after the grant of an operating license for a 17/24 GHz BSS space station or when the applicant or licensee certifies completion of critical design review, whichever occurs first.

(c) No later than 2 months prior to launch, each 17/24 GHz BSS space station licensee must update the predicted transmitting antenna off-axis gain information provided in accordance with paragraph (a) of this section by submitting measured transmitting antenna off-axis gain information over the angular ranges, measurement frequencies and polarizations specified in paragraphs (a)(1) through (5) of this section. * * *

(d) No later than 2 months prior to launch, or when applying for authority to change the location of a 17/24 GHz BSS space station that is already in orbit, each 17/24 GHz BSS space station licensee must provide pfd calculations based on the measured off-axis gain data submitted in accordance with paragraph (c) of this section, as follows:

(1) * * *

(ii) At the location of any subsequently-filed U.S. DBS space station where the pfd level in the 17.3–17.8 GHz band calculated on the basis of measured gain data exceeds −117 dBW/m²/100 kHz. In this rule, the term subsequently-filed U.S. DBS space station refers to any co-frequency Direct Broadcast Satellite service space station proposed in a license application filed with the Commission after the 17/24 GHz BSS operator submitted the predicted data required by paragraphs (a) through (b) of this section but before submission of the measured data required by this paragraph. * * *

* * * * *

■ 50. Amend § 25.275 by adding paragraph (e) to read as follows:

§ 25.275 Particulars of operation.

* * * * *

(e) Transmission from an earth station of an unmodulated carrier at a power level sufficient to saturate a satellite transponder is prohibited, except by the space station licensee to determine transponder performance characteristics.

■ 51. Add § 25.288 to read as follows:

§ 25.288 Obligation to remedy interference caused by NGSO MSS feeder downlinks in the 6700–6875 MHz band.

If an NGSO MSS satellite transmitting in the band 6700–6875 MHz causes harmful interference to previously licensed co-frequency Public Safety facilities, the satellite licensee has an obligation to remedy the interference.

Alternative Proposed Revision of Milestone and Bond Rules

Alternative 1

■ 1. Amend § 25.164 by revising paragraphs (a) and (b), removing and reserving paragraph (c), and revising paragraph (d) to read as follows:

§ 25.164 Milestones.

(a) Licensees of geostationary orbit satellite systems, other than DBS and DARS satellite systems, licensed on or after August 27, 2003 will be required to comply with the schedule set forth in paragraphs (a)(1) and (2) of this section in implementing their satellite systems, unless a different schedule is established by Title 47, Chapter I, or by Commission Order, or by Order adopted pursuant to delegated authority. These dates are to be measured from the date the license is issued.

(1) *Two years:* Complete the critical design review of the licensed satellite system.

(2) *Five years:* Launch the space station, position it in its assigned orbital location, and operate it in accordance with the station authorization.

(b) Licensees of non-geostationary orbit satellite systems other than DBS and DARS satellite systems licensed on or after September 11, 2003, will be required to comply with the schedule set forth in paragraphs (b)(1) through (b)(5) of this section in implementing their satellite systems, unless a different schedule is established by Title 47, Chapter I, or by Commission Order, or by Order adopted pursuant to delegated authority. These dates are to be measured from the date the license is issued.

(1) *Two years:* Complete the critical design review of the licensed satellite system.

(2) *Three years, six months:* Launch the first space station, place it in the authorized orbit, and operate it in accordance with the station authorization.

(3) *Six years:* Bring all the satellites in the licensed satellite system into operation.

* * * * *

(d) No later than 15 days after the milestone deadline for CDR, the recipient of an initial license for operation of a space station, or space stations, other than DBS or SDARS space stations, must either certify that CDR has been completed for the authorized satellite(s) or notify the Commission in writing that CDR has not been completed. A licensee that certifies completion of CDR must also file a corroborating affidavit from the satellite manufacturer and evidence of appropriate payment to date.

* * * * *

Alternative 2

■ 2. Amend § 25.164 by revising paragraphs (a) and (b), removing and reserving paragraphs (c) through (e), and revising paragraphs (f) and (g) to read as follows:

§ 25.164 Milestones.

(a) The recipient of an initial license for a GSO space station, other than DBS or SDARS space stations, granted on or after August 27, 2003 must launch the space station, position it in its assigned orbital location, and operate it in accordance with the station authorization no later than five years after the grant of the license, unless a different schedule is established by Title 47, Chapter I, or by order of the Commission or order adopted pursuant to delegated authority.

(b) The recipient of an initial license for an NGSO satellite system, other than

DBS or SDARS satellite systems, granted on or after September 11, 2003 must launch the authorized space stations, place them in the assigned orbits, and operate them in accordance with the station authorization no later than six years after the grant of the license, unless a different schedule is established by Title 47, Chapter I, or by order of the Commission or order adopted pursuant to delegated authority.

* * * * *

(f) A licensee subject to the requirements in paragraph (a) or (b) of this section must either demonstrate compliance with the requirement specified therein or notify the Commission in writing that the requirement was not met, within 15 days after the specified deadline. Compliance with a milestone requirement in paragraph (a) or (b) of this section may be demonstrated by certifying pursuant to § 25.121(d) that the space station(s) in question, has, or have, been launched and placed in the authorized orbital location or non-geostationary orbit(s) and that in-orbit operation of the space station or stations has been tested and found to be consistent with the terms of the authorization.

(g) Licensees of satellite systems that include both NGSO satellites and GSO satellites, other than DBS and DARS satellite systems, must meet the requirement in paragraph (a) of this section with respect to the GSO satellite(s) and the requirement in paragraph (b) of this section with respect to the NGSO satellites.

* * * * *

■ 3. Amend § 25.165 by revising the section heading and paragraph (d) to read as follows:

§ 25.165 Surety bonds.

* * * * *

(d)(1) In the event of a default as defined in paragraph (c) of this section, the amount determined pursuant to paragraph (a) of this section must be paid to the U.S. Treasury, with any additional amount determined pursuant to paragraph (f) of this section.

(2) If a licensee surrenders a license for cancellation prior to an applicable deadline in § 25.164(a) or (b), the surety shall pay the U.S. Treasury $400,000 plus a pro rata amount to be determined according to this formula: A = B*D/T, where A is the pro rata amount to be paid; B is either zero or the amount determined pursuant to paragraph (a) of this section minus $400,000, whichever is greater; D is the number of days that elapsed from the date of license grant until the date when the license was surrendered, and T is the total number of days from the date of grant until the relevant deadline in § 25.164(a) or (b). If the license was for a hybrid system subject to paragraph (a)(3) of this section, T is the number of days between grant and the deadline determined in accordance with § 25.164(b).

(3) If paragraph (f) of this section is applicable and the license is surrendered for cancellation prior to an applicable deadline in § 25.164(a) or (b), the amount to be paid will be the sum of the amounts determined in accordance with paragraphs (d)(2) and (f) of this section.

* * * * *

Alternative Proposed Revision of Two Degree Spacing Rules

■ 1. Amend § 25.140 by revising paragraphs (a) and (b)(3) to read as follows:

§ 25.140 Further requirements for license applications for geostationary space stations in the Fixed-Satellite Service and the 17/24 GHz Broadcasting-Satellite Service.

(a)(1) In addition to the information required by § 25.114, an applicant for GSO FSS space station operation involving transmission of analog video signals must certify that the proposed analog video operation has been coordinated with operators of authorized co-frequency space stations within 6 degrees of the requested orbit location.

(2) In addition to the information required by § 25.114, an applicant for a GSO FSS space station at an orbital location less than 2 degrees from the assigned location of an authorized co-frequency GSO space station must either certify that the proposed operation has been coordinated with the operator of the co-frequency space station or submit an interference analysis demonstrating the compatibility of the proposed system with the co-frequency space station. Such analysis must include, for each type of radio frequency carrier, the link noise budget, modulation parameters, and overall link performance analysis. (See Appendices B and C to Licensing of Space Stations in the Domestic Fixed-Satellite Service, FCC 83–184, and the following public notices, copies of which are available in the Commission's EDOCS database: DA 03–3863 and DA 04–1708.) The provisions in this paragraph do not apply to proposed analog video operation, which is subject to the requirement in paragraph (a)(1).

(3) In addition to the information required by § 25.114, applicants for GSO FSS space stations must provide the following for operation other than analog video operation:

(i) With respect to proposed operation in the conventional or extended C-band, certification that downlink EIRP density will not exceed 1 dBW/4kHz for digital transmissions or 8 dBW/4kHz for analog transmissions and that EIRP density from associated uplink operation will not exceed applicable envelopes in § 25.218 or § 25.221(a) unless the non-conforming uplink and/or downlink operation is coordinated with operators of previously authorized co-frequency space stations at assigned locations within 6 degrees of the orbital location of the proposed space station.

(ii) With respect to proposed operation in the conventional or extended Ku-band, certification that downlink EIRP density will not exceed 10 dBW/4kHz for digital transmission or 17 dBW/4kHz for analog transmission and that associated uplink operation will not exceed applicable EIRP density envelopes in §§ 25.218, 25.222, 25.226, or § 25.227 unless the non-conforming uplink and/or downlink operation is coordinated with operators of previously authorized co-frequency space stations at assigned locations within 6 degrees of the orbital location of the proposed space station.

(iii) With respect to proposed operation in the 20/30 GHz band, certification that the proposed space stations will not generate power flux-density at the Earth's surface in excess of -118 dBW/m^2/MHz and that associated uplink operation will not exceed applicable EIRP density envelopes in § 25.138(a) unless the non-conforming uplink and/or downlink operation is coordinated with operators of previously authorized co-frequency space stations at assigned locations within 6 degrees of the orbital location of the proposed space station.

(b) * * *

(3) Except as described in paragraph (b)(5) of this section, an applicant for a license to operate a 17/24 GHz BSS space station that will be located precisely at one of the 17/24 GHz BSS orbital locations specified in Appendix F of the Report and Order adopted May 2, 2007, IB Docket No. 06–123, FCC 07–76, must provide an interference analysis demonstrating the compatibility of its proposed network with any current or future authorized space station in the 17/24 GHz BSS that complies with the technical rules in this part and will be located at least 4 degrees from the proposed space station.

* * * * *

■ 2. Amend § 25.209 by revising paragraphs (a) through (c), removing and reserving paragraph (e), removing from paragraph (f) the word ''procedures'' wherever it appears and adding in its place the word ''requirements,'' and revising paragraph (h) to read as follows:

§ 25.209 Earth station antenna performance standards.

(a) Except as provided in paragraph (f) of this section, the gain of any earth station antenna operating in the Fixed-Satellite Service, including earth stations providing feeder links for satellite services other than FSS, may not exceed the following limits:

(1) In the plane tangent to the GSO arc, as defined in § 25.103, for earth stations not operating in the conventional Ku-band, the 28.35–30 GHz band, or the 24.75–25.25 GHz band:

$29-25\log_{10}\theta$	dBi	for $1.5° \leq \theta \leq 7°$.
8	dBi	for $7° < \theta \leq 9.2°$.
$32-25\log_{10}\theta$.	dBi	for $9.2° < \theta \leq 48°$.
-10	dBi	for $48° < \theta \leq 180°$.

Where θ is the angle in degrees from a line from the focal point of the antenna to the target satellite, and dBi refers to dB relative to an isotropic radiator. This envelope may be exceeded by up to 3 dB in 10% of the range of θ angles from ±7–180°.

(2) In the plane tangent to the GSO arc, for earth stations operating in the conventional Ku-band:

$29-25\log_{10}\theta$	dBi	for $1.5° \leq \theta \leq 7°$.
8	dBi	for $7° < \theta \leq 9.2°$.
$32-25\log_{10}\theta$	dBi	for $9.2° < \theta \leq 48°$.
-10	dBi	for $48° < \theta \leq 85°$.
0	dBi	for $85° < \theta \leq 180°$.

Where θ and dBi are as defined in paragraph (a)(1) above. This envelope may be exceeded by up to 3 dB in 10% of the range of θ angles from ±7–180°.

(3) In the plane tangent to the GSO arc, for earth stations operating in the 28.35–30 GHz band:

$29-25\log_{10}\theta$	dBi	for $2° \leq \theta \leq 7°$.
8	dBi	for $7° < \theta \leq 9.2°$.
$32-25\log_{10}\theta$	dBi	for $9.2° < \theta \leq 48°$.
0	dBi	for $48° < \theta \leq 180°$.

Where θ and dBi are as defined in paragraph (a)(1) above. This envelope may be exceeded by up to 3 dB in 10% of the range of θ angles from ±7–180°.

(4) In the plane perpendicular to the GSO arc, as defined in § 25.103, for earth stations not operating in the conventional Ku-band, 28.35–30 GHz band, or 24.75–25.25 GHz band:

Outside the main beam, the gain of the antenna shall lie below the envelope defined by:

$32-25\log_{10}\theta$	dBi	for $3° < \theta \leq 48°$.
-10	dBi	for $48° < \theta \leq 180°$.

Where θ and dBi are as defined in paragraph (a)(1) above. This envelope may be exceeded by up to 6 dB in 10% of the range of θ angles from ±3–180°.

(5) In the plane perpendicular to the GSO arc, for earth stations operating in the conventional Ku-band:

Outside the main beam, the gain of the antenna shall lie below the envelope defined by:

$32-25\log_{10}\theta$	dBi	for $3° < \theta \leq 48°$.
-10	dBi	for $48° < \theta \leq 85°$.
0	dBi	for $85° < \theta \leq 180°$.

Where θ and dBi are as defined in paragraph (a)(1) above. This envelope may be exceeded by up to 6 dB in 10% of the range of θ angles from ±3–180°.

(6) In the plane perpendicular to the GSO arc, for earth stations operating in the 28.35–30 GHz band or 24.75–25.25 GHz band:

Outside the main beam, the gain of the antenna shall lie below the envelope defined by:

$32-25\log_{10}\theta$	dBi	for $3.5° < \theta \leq 7°$.
10.9	dBi	for $7° < \theta \leq 9.2°$.
$35-25\log_{10}\theta$	dBi	for $9.2° < \theta \leq 48°$.
3	dBi	for $48° < \theta \leq 180°$.

Where θ and dBi are as defined in paragraph (a)(1) above. This envelope may be exceeded by up to 6 dB in 10% of the range of θ angles from ±3–180°.

(b) Except as provided in paragraph (f) of this section, the off-axis cross-polarization gain of any antenna used for transmission from an FSS earth station, including earth stations providing feeder links for satellite services other than FSS, may not exceed the following limits:

(1) In the plane tangent to the GSO arc, for earth stations not operating in the 28.35–30 GHz band or the 24.75–25.25 GHz band:

$19\text{-}25\log_{10}\theta$	dBi	for $1.8° < \theta \leq 7°$.
-2	dBi	for $7° < \theta \leq 9.2°$.

Where θ and dBi are as defined in paragraph (a)(1) above.

(2) In the plane perpendicular to the GSO arc, for earth stations not operating in the 28.35–30 GHz band or the 24.75–25.25 GHz band:

$19\text{-}25\log_{10}\theta$	dBi	for $3° < \theta \leq 7°$.
-2	dBi	for $7° < \theta \leq 9.2°$.

Where θ and dBi are as defined in paragraph (a)(1) above.

(3) In the plane perpendicular to the GSO arc, for earth stations operating in the 28.35–30 GHz band or 24.75–25.25 GHz band:

$19\text{-}25\log_{10}\theta$	dBi	for $2° < \theta \leq 7°$.
-2	dBi	for $7° < \theta \leq 9.2°$.

Where θ and dBi are as defined in paragraph (a)(1) above.

(c)(1) An earth station licensed for operation with an FSS space station or registered for reception of transmissions from such a space station pursuant to Sections 25.131(b) and (d) is not entitled to protection from interference from authorized operation of previously authorized stations that would not cause harmful interference to that earth station if it were using an antenna with receive-band gain patterns conforming to the levels specified in Sections 25.209(a) and (b). For purposes of this rule, a previously authorized station is one that was licensed by the Commission or approved for U.S. market access prior to the licensing of the earth station receiving interference.

(2) The operator of an earth station licensed for operation with an FSS space station or registered for reception of transmissions from such a space station pursuant to Sections 25.131(b) and (d) may claim protection from harmful interference from operation of any station that is not previously authorized as that term is defined in paragraph (c)(1) of this section, unless such interference is permitted under a coordination agreement with the earth station operator or the operator of a space station with which the earth station communicates.

(3) A 17/24 GHz BSS telemetry earth station is not entitled to protection from harmful interference from authorized space station operation that would not cause harmful interference to that earth station if it were using an antenna with receive-band gain patterns conforming to the levels specified in paragraphs (a) and (b) of this section. Receive-only earth stations in the 17/24 GHz BSS are entitled to protection from harmful interference caused by other space stations to the extent indicated in § 25.224.

* * * * *

(h) The gain of any transmitting antenna in a gateway earth station communicating with NGSO FSS satellites in the 10.7–11.7 GHz, 12.75–13.15 GHz, 13.2125–13.25 GHz, 13.8–14.0 GHz, and/or 14.4–14.5 GHz bands must lie below the envelope defined as follows:

$29\text{-}25\log_{10}(\theta)$	dBi	for $1° \leq \theta \leq 36°$.
-10	dBi	for $36° \leq \theta \leq 180°$.

Where θ and dBi are as defined in paragraph (a)(1) above. This envelope may be exceeded by up to 3 dB in 10% of the range of θ angles from ±7–180°.

■ 3. Amend § 25.220 by redesignating paragraph (a)(1) as paragraph (a), removing paragraph (a)(2), removing and reserving paragraphs (d)(1)(i) and (d)(2), and revising the redesignated paragraph (a), paragraph (b), and the third sentence in paragraph (d)(1) introductory text to read as follows:

§ 25.220 Non-conforming transmit/receive earth station operations.

(a) The requirements in this section apply to applications for, and operation of, earth stations transmitting in the conventional or extended C-band, the conventional or extended Ku-band, or the 20/30 GHz bands that do not qualify for routine licensing under relevant criteria in §§ 25.134, 25.138, 25.211, 25.212, 25.218, 25.221(a)(1) or (3), 25.222(a)(1) or (3), 25.226(a)(1) or (3), or § 25.227(a)(1) or (3).

(b) Applications filed pursuant to this section must include the information required by § 25.115(g)(1).

* * * * *

(d)(1) * * * The applicant will be granted protection from receiving interference from the satellite systems included in the coordination agreements referred to in the certification required by paragraph (d)(1)(ii) of this section only to the extent that protection from receiving interference is afforded by those coordination agreements.

* * * * *

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